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In the

Supreme Court of the United States

LESLIE WAYNE BOWLING, Lt., RUSSELL WHITMAN, Sgt., EDWARD DIEKMAN, Officer,

Petitioners,

v.

LADAWNYA K. CARPENTER, CHARLES N. COMBS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

LYNNETTE BALLATO DINKLER
Counsel of Record
JAMEY T. PREGON
SUBASHI, WILDERMUTH & DINKLER
50 CHESTNUT STREET, SUITE 230
THE GREENE TOWN CENTER
DAYTON, OH 45440
PHONE: (937) 427-8800

Counsel for Petitioners

October 15, 2008

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

1. Whether the first prong of qualified immunity is satisfied, in light of the exigent circumstances and community caretaking exceptions to the Fourth Amendment, when police officers enter a private residence, without a warrant, during the officers' enforcement of a domestic violence protection order, in order to secure the safety and protection of a minor child, following the arrest of the minor child's custodial parent for violating the protection order? (*Brigham City, Utah v. Stuart*, 547 U.S. 398, 126 S.Ct. 1943 (2006), extended; *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973), extended)

2. In the context of claims of excessive force during an arrest, what is the proper amount of deference that must be given to reasonable police officers on the scene during an emotionally-charged domestic dispute, pursuant to *Saucier v. Katz*, 533 U.S. 194 (2001), when a claimant submits a self-serving affidavit, that is contrary to her deposition testimony, in an attempt to manufacture a question of fact in seeking to overcome summary judgment on the issue of qualified immunity? (*Scott v. Harris*, 127 S.Ct. 1769, 1774-75, 167 L.Ed.2d 686 (2007), applied)

PARTIES TO THE PROCEEDINGS

Petitioners

Petitioners **Leslie Wayne Bowling**, **Russell Whitman**, and **Edward Diekman** are police officers for the City of Franklin, Ohio, who were denied qualified immunity in a Section 1983 action alleging an unlawful entry, and the use of excessive force, in violation of the Fourth Amendment.

Respondents

Respondents and siblings, **Charles Combs** ("Combs") and **LaDawnya Carpenter** ("Carpenter"), are plaintiffs in the underlying Section 1983 case. Combs asserts an alleged unlawful entry claim when officers entered his apartment to remove his 10-month-old baby to place him into the custody of his mother; Carpenter makes a claim for an alleged use of excessive force.

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PETITION FOR A WRIT OF CERTIORARI

Russell Whitman, Wayne Bowling, and Edward Diekman petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

INTRODUCTION

The importance of this case reaches far beyond the City of Franklin, Ohio, and its 11,000 residents because the role of police officers nationwide is directly impacted as they act to serve and protect victims of domestic violence and their children.

Combs and his sister Carpenter sued Sergeant Whitman, and Officers Bowling and Diekman for alleged violations of their civil rights because the Officers lawfully enforced a Domestic Violence Protection Order. Sarah Kirby obtained the Order to protect her from further violence at the hand of her 10-month-old baby's father, Combs. The Order set forth when Kirby and Combs were to exchange custody of Tyler at the Franklin Police Department.

Here, the Officers were dispatched to Combs' apartment to respond to Kirby's call for help because Combs had again violated the Order by refusing to relinquish baby Tyler to Kirby. Combs and his many family members gathered at the scene to support Combs' violation of the Order. They offered him their support by threatening Kirby with physical violence. The Officers knew the threats were genuine because they knew Carpenter physically assaulted Kirby about one year earlier. As such, the Officers faced an

emotionally-charged situation at the scene, but never lost sight of their role and took all appropriate steps to enforce all aspects of the Order. This included arresting Combs for violating the Order, and entering Combs' apartment to remove Tyler and place him with his mother, Kirby.

Combs sued the Officers claiming a Fourth Amendment violation when an Officer had to enter his apartment to take custody of the baby. He does not challenge that the seizure of the baby was lawful. This case presents the Court with an opportunity to extend the exigent circumstances exception to warrantless entries to allow for the protection of children when the custodial parent is arrested. Likewise, this Court's review is needed because our nation's courts of appeals do not agree on what constitutes a lawful exercise of the community caretaking function of police officers, as proven by this case. Existing precedent tells us police can enter a house because loud music is coming from it but here, police cannot enter Combs' apartment to take Tyler to his mother in compliance with the Domestic Violence Protection Order.

It is truly an absurd notion that a custodial parent can be arrested outside of his residence but, according to the Sixth Circuit in this case, the police cannot enter the premises, without a warrant, to secure the safety of a ten-month-old baby. This is particularly true in this case, where the lower courts have held that the seizure of the baby was constitutional, but the entry into the apartment to seize the baby may be unconstitutional. This is an issue that cries out for the Court's guidance and review.

Further, the Court should seize this opportunity to reconcile the summary judgment standard with the directives set forth in *Saucier* and *Graham*, which is long overdue. Lower courts are desperately in need of instruction from this Court on how lower courts should properly afford deference to the officers' on-scene perceptions in the face of a self-serving affidavit implicitly used to manufacture a question of fact to defeat an otherwise proper summary judgment motion. When Carpenter's out-of-control behavior spilled into the parking lot where Kirby waited to receive her baby, she forced the Officers to arrest her. Carpenter improperly defeated the Officers' entitlement to qualified immunity on her excessive force claim when she opposed their motion for summary judgment with an affidavit replete with inflammatory words like "slam" and "crush." Review of this case is needed to end the erosion of qualified immunity from suit by claimants who manufacture questions of fact.

OPINIONS BELOW

The Sixth Circuit Court of Appeals decision, *Carpenter v. Bowling*, 276 Fed.Appx. 423 (6th Cir. 2008), was not selected for publication in the Federal Reporter. (1a–11a) The opinions of the district court are also unreported. *Carpenter v. City of Franklin, Ohio*, 2006 WL 3791931 (S.D. Ohio 2006)(16a-51a); *Carpenter v. City of Franklin, Ohio*, 2007 WL 120140 (S.D. Ohio 2007)(12a-15a).

JURISDICTION

The Sixth Circuit Court of Appeals entered judgment on May 2, 2008. The Sixth Circuit Court of

Appeals denied Petitioners' request for a rehearing *en banc* on July 17, 2008. (52a-53a) The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV. Respondents bring their Fourth Amendment claims under 42 U.S.C. § 1983.

STATEMENT OF THE CASE

1. The Domestic Violence Protection Order (73a-85a) was filed on July 26, 2002, when Kirby, as petitioner, sought protection from Combs, who was listed as the respondent. *Id.* The Order was in place from July 26, 2002 through July 1, 2007. *Id.*

The Order prohibited Combs from abusing Kirby, and also prohibited Combs from having any contact with Kirby, including even coming within 100 yards of Kirby. *Id.*

With respect to custody of Combs and Kirby's infant child, Tyler, the Order directed the child would remain with Combs during the week, and with Kirby on the weekends. *Id.* All exchanges of the child were to take place at the Franklin Police Department. *Id.*

The Order warned Combs multiple times that he could be arrested for violating the Order. *Id.* The Order clearly states that only the Court can change the Order. *Id.*

2. On more than one occasion, before the day in question, Combs violated the Order by refusing to turn Tyler over to Kirby as required by the Order. (87a) By his own admission, Combs was in violation of the Order on August 16, 2002, when he failed to take the child to the Franklin Police Department to give Tyler to his mother, Kirby. (104a)

An examination of Combs' affidavit (103a-108a), as well as Carpenter's affidavit, (142a-147a) reveals that Combs had no intention of complying with the Order when he was arrested on August 16, 2002. As Kirby stated in her affidavit, Kirby had no choice but to turn to the police to get her child from Combs. (87a) While Combs claims the police violated his Fourth Amendment rights by walking into his apartment to collect Tyler after Combs' himself was arrested, he has left unchallenged the lower court decisions holding the seizure of Tyler was lawful. (5a)

3. Kirby turned to the Franklin police to enforce the Order Combs frequently chose to violate so she could obtain custody of her baby. (87a) Kirby told police on the day in question she filed paperwork with

the court to have Combs found in contempt for his violations of the Order. *Id.*

In response to Kirby's call for help, Sergeant Whitman, and Officers Bowling and Diekman were dispatched to Combs' apartment to arrest Combs. (3a) Combs was waiting for the police at his apartment, along with numerous family members, including his sister, Carpenter, his mother, and his new girlfriend, to name a few. *Id.* Kirby, who was not allowed to enter the apartment under the Order, was waiting in the apartment parking lot.

4. The Police arrested Combs outside of Combs' apartment. *Id.* Combs and Carpenter both protested Combs' arrest, and claimed to have temporary custody papers at Carpenter's house that would excuse Combs' violations of the Order. *Id.* The Officers obliged Combs and Carpenter, and even allowed Carpenter to return to her house to look for the "temporary custody papers," and delayed taking Combs to jail. *Id.* When Carpenter returned to Combs' apartment, with no paperwork because none, in fact, existed, the Police next spoke to Combs' attorney, and then called the Warren County Children's Services to take extra care in enforcing the Order. *Id.*

The call with Combs' lawyer, Roger Staton, confirmed that Staton had failed to file any paperwork to request modification of the Order. *Id.* The call to Children's Services confirmed that Kirby had the right to take the child under the Order on that particular day. *Id.* Therefore, to further enforce the Order, Sergeant Whitman took Tyler from the arms of Carpenter, who was at the time in Combs' apartment,

to lawfully place him in the custody and arms of his mother, Kirby, who was in the parking lot. Combs then went to jail. *Id.*

5. It is undisputed in the record that the situation unfolding at Combs' apartment was an emotionally-charged situation for Combs, Carpenter, and their family members. Combs was crying and visibly upset when he was placed under arrest. (265a) Carpenter was visibly upset and very vocal throughout the incident. (265a-266a) Combs' mother was upset, and her use of profanity further ignited the scene. (302a) Sergeant Whitman and Officer Bowling observed Carpenter particularly upset throughout the incident, observed her throwing objects around inside the apartment, and heard her use profanities. (109a-140a)

6. Officer Bowling took Carpenter aside before leaving the apartment, and warned Carpenter that she needed to calm down because she was not helping the situation with her inappropriate behavior. (281a-282a) Carpenter ignored the warning and continued to cry, swear, and act hysterically as she followed the Officers to the parking lot, where Kirby was waiting for her baby Tyler. Next, Carpenter, still crying and upset, yelled to Kirby from across the parking lot "remember, Sunday at six." (296a-297a) Sergeant Whitman and Officer Bowling heard Carpenter finish the sentence by calling Kirby a "bitch." (112a, 132a)

This did not surprise the Officers, considering they knew Carpenter from her past brushes with their department. (109a-140a) Carpenter admitted Officer Bowling knew her and her violent tendencies from her many prior contacts with him arising out of domestic

violence calls involving her ex-husband, herself, and their child, as well as the instance when Carpenter physically assaulted Kirby. (356a; 362a-363a) Officer Bowling, wanting to maintain control over the scene and to protect Kirby and her child then in the parking lot, placed Carpenter under arrest for disorderly conduct and failure to desist. (112a)

7. Carpenter's claim for the alleged use of excessive force relates to her arrest in the parking lot. Officer Bowling described her arrest as follows:

> ...I had placed one handcuff on Carpenter, she began to turn away from me in such a way that I was pushing her against a parked vehicle, and she tried to push away from the parked vehicle. With the assistance of Sergeant Whitman and Officer Diekman, we were able to place the other handcuff onto Carpenter, and Officer Diekman and I were able to place Carpenter into the patrol car.

(112a)

Police practices expert, David Grossi, opined the officers' handcuffing an individual behind the back, and the use of vertical stabilization, such as a van, is standard procedure. He further concluded the force used by these Officers constituted low levels of force and greater levels of force may have been warranted under these circumstances.

Carpenter admitted that she repeatedly protested her arrest, which included raising her voice and struggling with the arresting officers. (316a) She

further admitted that she verbally protested continuously, and tried to get the officers to handcuff her in front. (309a) She further testified that her arrest lasted just "a few seconds." (309a)

Carpenter used hyperbole in her affidavit, describing the arresting officers' actions as "crushing her," and "slamming her." (145a) The Sixth Circuit's decision seized on these words, and concluded that a question of fact existed as to the excessive force claim, and in doing so, ignored Carpenter's deposition testimony on the same subject. In doing so, the court afforded no deference to the Officers' perceptions on the scene and ignored Carpenter's deposition testimony taken after she executed the self-serving affidavit.

8. With regard to removing Tyler from the home, the Sixth Circuit noted that his "seizure" was lawful. The only issue is whether the Officers violated the Fourth Amendment by physically entering Combs' apartment to take the 10-month-old baby out of it. The Sixth Circuit cites no law on this issue which denies Sergeant Whitman, Officer Bowling, and Officer Diekman qualified immunity from suit. The Sixth Circuit does not consider, nor even acknowledge, that the Officers entered the apartment to enforce the Domestic Violence Protection Order. The Sixth Circuit also rejected that the Officers acted in exigent circumstances and in a caretaking capacity when removing Tyler and placing him in the lawful custody of his mother.

REASONS FOR GRANTING THE PETITION

I. The Court should take this opportunity to create an exception to the warrant requirement that permits a warrantless entry into a private residence to secure a minor child following the arrest of the custodial parent and in accordance with the terms of a Domestic Violence Protection Order.

As this Court has recognized, it is a "basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *Groh v. Ramirez*, 540 U.S. 551, 559, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004). However, because the ultimate touchstone of the Fourth Amendment is "reasonableness," the warrant requirement is subject to certain exceptions. *Flippo v. West Virginia*, 528 U.S. 11, 13, 120 S.Ct. 7, 145 L.Ed.2d 16 (1999) (per curiam); *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). To not reverse here is patently unreasonable.

This Court has set forth a variety of exceptions to the Fourth Amendment, and permitted warrantless entries by police onto private property. Recently, in *Brigham City, Utah v. Stuart*, 547 U.S. 398, 126 S.Ct. 1943 (2006), the Court recounted the following exceptions: **(1)** fighting a fire and investigating its cause (*Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978)); **(2)** preventing the imminent destruction of evidence (*Ker v. California*, 374 U.S. 23, 40, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963)); **(3)** engaging in "hot pursuit" of a fleeing suspect (*United States v. Santana*, 427 U.S. 38, 42-43, 96 S.Ct.

2406, 49 L.Ed.2d 300 (1976)); and (4) rendering emergency assistance to an injured occupant or protecting an occupant from imminent injury (*Mincey v. Arizona*, 437 U.S. 385, 393-394, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978)).

The principle behind such exceptions to the warrant requirement is to allow police officers to respond to exigent circumstances. As this Court has repeatedly held, "warrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Brigham City*, supra (citing *Mincey*, supra).

Here, the Sixth Circuit, like the district court, acknowledged that the seizure of Tyler, a ten-month-old baby, from his father's apartment, following his father's arrest, was lawful. Nevertheless, the Police are being denied qualified immunity and are being forced to stand trial because they had to enter Combs' apartment to take Tyler to the arms of his mother waiting outside the apartment – all because Combs refused to follow the Order himself.

The time has come for the Court to create an exception to the warrant requirement to allow police officers to enter a private residence, without a warrant, to take custody of a minor child following the arrest of the child's custodial parent or guardian. The Court can accomplish this by either extending the "exigent circumstances" exception to encompass this situation, or by extending the "community caretaking"

exception to the warrant requirement. Or, the Court can place all states on notice through this case that its officers can lawfully enter private premises to enforce the terms governing children in domestic violence protection orders without a warrant so the injustice that has occurred in this case never happens again.

A. This exception is necessary to protect children.

The government has a compelling interest in the welfare of children. *Tower v. Leslie-Brown*, 326 F.3d 290, 297 (1st Cir. 2003). In this case, a baby was being held in an emotionally-charged apartment following the arrest of the baby's father, who had violated a Domestic Violence Protection Order. There is no dispute that the custodial parent, Combs, was arrested by the Officers outside of his apartment. Combs asserts a claim for an alleged unlawful entry against the Officers for entering his apartment after his arrest for the sole purpose of taking the baby to his mother – the only person with lawful custody over the baby at that particular time. Combs admits the seizure of the baby was lawful.

The need to protect or preserve life, or to avoid serious injury, is justification for what would be otherwise considered a violation of the Fourth Amendment. *Brigham City*, supra. States have a profound interest in the welfare of the child, particularly sheltering the child from abuse. *Tenenbaum v. Williams*, 193 F.3d 581, 593 (2d Cir. 1999). As the Eleventh Circuit noted recently, in *Doe v. Kearney*, 329 F.3d 1286 (11th Cir. 2003), courts have recognized that a state may constitutionally remove

children threatened with imminent harm when it is justified by emergency circumstances. *Kearney*, supra at 1293 (citing *Mabe v. San Bernardino County, Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1106 (9th Cir. 2001); *Brokaw v. Mercer County*, 235 F.3d 1000, 1020 (7th Cir. 2000); *Tenenbaum*, 193 F.3d at 593-94; *Hollingsworth v. Hill*, 110 F.3d 733, 739 (10th Cir. 1997); *Jordan by Jordan v. Jackson*, 15 F.3d 333, 346 (4th Cir. 1994)).

Further, when custodial parents are arrested, and the arrest occurs away from the custodial parents' private residence, courts have permitted police officers to detain, or take into protective custody, the arrestee's children. *Cherrington v. Skeeter*, 344 F.3d 631 (6th Cir. 2003); *Matheny v. Boatright*, 970 F.Supp. 1039, 1041 (S.D.Ga.1997). The same principle should apply even when the arrest occurs on or near the custodial parents' private residence. And, the fact that non-custodial relatives or significant others to the arrestee are present should be immaterial to the rule of law that needs to be established allowing officers to enter the premises without a warrant to protect the child by enforcing the domestic violence protection order.

This case presents the Court with the opportunity to extend, and make clear, that Fourth Amendment protections are not violated when police officers arrest a minor child's custodial parent or guardian without a warrant, outside the parent or guardian's private residence, and then must enter the premises to take the minor child into protective custody. The Court has an opportunity to solidify the right of police officers to act reasonably in circumstances, as seen here, that are fraught with issues of domestic violence.

No one can deny the vast problem that domestic violence poses for this country. The American Bar Association, on its website,[1] posts numerous disturbing statistics and studies with respect to children and domestic violence, including:

- Slightly more than half of female victims of intimate violence live in households with children under age 12.[2]

- Battered women are not the only victims of abuse - it is estimated that anywhere between 3.3 million and 10 million children witness domestic violence annually. Research demonstrates that exposure to violence can have serious negative effects on children's development.[3]

- Children exposed to Intimate Partner Violence were 1.6 times as likely to score in the borderline to clinical level range on externalizing behaviors relative to children of

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[1] http://www.abanet.org/domviol/statistics.html (Oct. 8, 2008); see also Family Violence Prevention Fund, The Facts on Children and Domestic Violence, (2005), available at http://endabuse.org/resources/facts/Children.pdf (Aug 1, 2005).

[2] Lawrence A. Greenfield et al., U.S. Dep't of Just., NCJ 167237, Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouse, Boyfriends, and Girlfriends (1998) available at www.ojp.usdoj.gov/bjs/pub/pdf/vi.pdf).

[3] Sharmila Lawrence, National Center for Children in Poverty, Domestic Violence and Welfare Policy: Research Findings That Can Inform Policies on Marriage and Child Well-Being 5 (2002).

> similar age and sex (as measured on three scales of internalizing behaviors, externalizing behaviors, and social competence according to the standardized psychometric instrument of Achenbach's Child Behavior Checklist, or CBCL).[4]

No one, not even Combs and Kirby, can seriously argue that police officers should not be permitted to take an infant child into protective custody when the infant's custodial parent is arrested. If Combs had been arrested walking on a public sidewalk, the police would not have left 10-month-old Tyler on the sidewalk to fend for himself. There is no practical reason to distinguish a sidewalk arrest from the arrest in this case. The police could not have verbally commanded 10-month-old Tyler to walk out of his father's apartment so that he could be turned over to his mother, in compliance with the Domestic Violence Protective Order.

The Sixth Circuit's decision in this case denies qualified immunity for police officers to enter into a private residence to secure the safety of a minor child following the arrest of the child's custodial parent. This ruling is made despite the Sixth Circuit's holding that the police officers' "seizure" of Tyler was lawful. If the officers are expected to obtain a search warrant in order to lawfully enter the apartment to secure Tyler before turning him over to his mother, in

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[4] Mary A. Kernic et al., Behavioral Problems Among Children Whose Mothers are Abused by an Intimate Partner, 27 Child Abuse & Neglect 1231 at 1239 (2003).

compliance with the Domestic Violence Protection Order, who is supposed to provide for his safety in the meantime? This decision, if allowed to stand, unreasonably and unnecessarily places children in danger. Additionally, it wrongly empowers respondents to domestic violence protective orders, especially respondents like Combs, who choose to repeatedly violate such protective orders.

B. This appellate court decision creates conflicts within the Sixth Circuit and, between the Sixth Circuit and the First, Fifth, Eighth and Tenth Circuits, which must be settled regarding the application of a police officer's "community caretaking" function.

This Court created a "community caretaking" exception to the Fourth Amendment, reasoning as follows:

> Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Cady v. Dombrowski, 413 U.S. 433, 441, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973).

The Northern District of Ohio recently recounted the application and extension of the "community caretaking" exception among the Circuits as follows:

> ...the caretaking function ***has extended to warrantless entry into private premises***, usually in response to manifestations of criminal conduct. See, e.g., *United States v. Johnson*, 9 F.3d 506, 510 (6th Cir. 1993) (officers observed broken window and individuals inside residence while responding to burglary report); *United States v. York*, 895 F.2d 1026, 1029 (5th Cir. 1990) (occupant had become belligerent and was threatening others, including children).
>
> The Sixth Circuit also ***has approved warrantless entry in response to excessively loud music coming from a residence***, where the officers' efforts to alert residents to their presence had been unsuccessful. *United States v. Rohrig*, 98 F.3d 1506, 1521 (6th Cir. 1996) ("by entering Defendant's residence for the limited purpose of locating and abating a nuisance, the officers sought to restore the neighbors' peaceful enjoyment of their homes and neighborhood.").
>
> * * *
>
> [C]ourts have applied the caretaking exception ...: i.e., where officers have acted to protect an individual from endangering himself or others. See *Gallegos v. City of Colorado Springs*, 114 F.3d 1024, 1029 (10th Cir. 1997) (officers

> responded to reports of a suspicious person or prowler in the neighborhood and about a drunken individual quarreling with a woman; "[t]his was not a case of police officers arbitrarily stopping an individual [on] the sidewalk during the middle of the afternoon"); *United States v. Rideau*, 949 F.2d 718, 720 (5th Cir. 1991), vacated on other grounds, 969 F.2d 1572 (5th Cir. 1992) (en banc) (agreeing with panel on this point) (officers stopped defendant for his own safety and the safety of others after observing him standing in the middle of the road at night, dressed in dark clothes, and apparently intoxicated); *United States v. Wallace*, 889 F.2d 580, 582 (5th Cir. 1989) (officers detained defendant for his own safety after being informed that he possessed gun and had threatened suicide); *United States v. Miller*, 589 F.2d 1117 (1st Cir. 1978) (where the circumstances justified a reasonable fear of a drowning, officers could board an abandoned vessel to determine its ownership and protect safety of its mariners); *United States v. Nord*, 586 F.2d 1288 (8th Cir. 1978) (officers entered defendant's apartment on being summoned there by a third person, who told officers that he was concerned because defendant was intoxicated).

Jacobs v. Village of Ottawa Hills, 111 F.Supp.2d 904 (N.D.Ohio 2000)(emphasis added).

Like the Sixth Circuit, the Third Circuit also has allowed police officers to enter a private residence, without a warrant, in response to loud music coming

from a residence. *Noone v. City of Ocean City*, 60 Fed.Appx. 904 (3rd Cir. 2003).

The Third Circuit has also created a "knock and talk" exception to the warrant requirement. *Estate of Smith v. Marasco*, 430 F.3d 140 (3rd Cir. 2005). In *Marasco*, police were responding to a complaint by a private citizen that a neighbor was shining a porch light onto his property. *Id.* The Third Circuit held that "entry into the curtilage after not receiving an answer at the front door might be reasonable as entry into the curtilage may provide the only practicable way of attempting to contact the resident." *Id.* at 157.

If the "community caretaking" exception to the warrant requirement permits a warrantless entry onto private property in response to ***excessively loud music*** coming from the property, ***or a neighbor shining a light into another neighbor's backyard***, it begs the question as to how this exception would not apply to ***removing an infant child from a private residence following the arrest of the child's custodial parent***.

This case affords the Court with an opportunity to revisit the "community caretaking" exception to the Fourth Amendment, which has existed since 1973, and clarify its application to situations such as the one at issue in this case. The research and studies prove the fact pattern here repeats itself, sadly, countless times a day in our country. The decision in this case proves the circuit courts are in need of guidance on this issue. Absent a reversal of the appellate court decision here, it can even be said that a conflict is now created as to how the community caretaking exception is applied

within the Sixth Circuit and between the Sixth Circuit and the First, Fifth, Eighth and Tenth Circuits.

This Court must take review of this case because now, on one hand, the exception allows police officers to enter a private residence without a warrant to tell the occupants to turn their music down, but on the other hand, police officers cannot enter a residence without a warrant to take a baby into protective custody following the arrest of the custodial parent who is in violation of a domestic violence protective order.

Common sense is not meant to defy the application of the Fourth Amendment. The Fourth Amendment reasonableness standard does not forbid providing for the safety of children in our country when their guardians are taken to jail. The law should not permit civil rights suits to be filed against police officers enforcing domestic violence protective orders when they are lawfully carrying out their duties to protect domestic violence victims and their children.

If the Court extends either the "exigent circumstances" or the "community caretaking" exceptions to encompass this situation, then the officers are entitled to qualified immunity because they did not violate Combs' Fourth Amendment rights. The Sixth Circuit also erred in not granting the Officers summary judgment on their qualified immunity defense because there is no clearly established law on this issue. In fact, the Sixth Circuit cited no law whatsoever on this issue in its opinion.

C. By not allowing police officers to enforce a domestic violence protective order by arresting the offender, and taking the offender's minor child into protective custody, courts place police officers in the position of facing the double-edged sword of potential liability for unlawful entry versus potential "snake pit" liability.

The Police Officers here were dispatched to Combs' apartment to enforce a Domestic Violence Protective Order. Specifically, they were dispatched in response to Combs' violation of the provisions regarding custody and visitation of Combs and Kirby's minor child. Combs was again refusing to comply with the provisions of the Order that required him to come to the Franklin Police Department to turn the child over to Kirby's custody each Friday.

The problem of domestic violence in America cannot be ignored. The Ninth Circuit recently recognized this as such, stating "Domestic violence is a serious problem in America. When love turns to hate, grave injury-even death-can result. When that violence spins out of control, considerable problems confront the criminal justice system." *Parle v. Runnels*, 505 F.3d 922 (9th Cir. 2007).

Statistics and studies confirm the horrific problem that domestic violence presents for this country. Domestic violence protective orders, like the one at issue in this case, have been an important tool in combating the problem of domestic violence. For this reason, the wide-spread impact this case presents to this Court is evident. Victims and the children of

victims of domestic violence need this Court to establish law for all federal courts to heed, holding that action taken by police to enforce domestic violence protective orders will not cause police officers to be exposed to claims of civil liability filed by the abuser.

The staggering statistics and studies posted on the American Bar Association's website[5] on domestic violence, law enforcement, and protective orders, will be positively affected if this case is reviewed and reversed. Those statistics and studies include:

- According to the U.S. Department of Justice, between 1998 and 2002:
    - Of the almost 3.5 million violent crimes committed against family members, 49% of these were crimes against spouses.
    - 84% of spouse abuse victims were females, and 86% of victims of dating partner abuse at were female.
    - Males were 83% of spouse murderers and 75% of dating partner murderers
    - 50% of offenders in state prison for spousal abuse had killed their victims. Wives were more likely than husbands to be killed by their spouses: wives were about half of all spouses in the

[5] http://www.abanet.org/domviol/statistics.html (Oct. 8, 2008).

population in 2002, but 81% of all persons killed by their spouse.[6]

- According to the Department of Justice:
  - Approximately 60% of family violence victimizations were reported to police between 1998 and 2002, up from about half between 1993 and 1998.
  - Fear of reprisal by the perpetrator made up 19% of the reasons females did not report their victimization to the police.[7]
- Reports indicate some 86% of the women who received a protection order state the abuse either stopped or was greatly reduced.[8]

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[6] Citing Matthew R. Durose et al., U.S. Dep't of Just., NCJ 207846, Bureau of Justice Statistics, Family Violence Statistics: Including Statistics on Strangers and Acquaintances, at 31-32 (2005), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf.

[7] Citing Matthew R. Durose et al., Dep't of Just., NCJ 207846, Bureau of Justice Statistics, Family Violence Statistics: Including Statistics on Strangers and Acquaintances at 2 (2005) available at http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf; Callie Marie Rennison & Sarah Welchans, U.S. Dep't of Just., NCJ 178247, Bureau of Justice Statistics Special Report: Intimate Partner Violence at 1, 7 (2000), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv.pdf.

[8] Citing James Ptacek, Battered Women in the Courtroom: The Power of Judicial Response (1999), (reviewed in Meda Chesney-Lind, James Ptacek, Battered Women in the Courtroom: The Power of Judicial Response, 35 Crime, L. & Soc. Change 363 (2001)).

These statistics and studies show police intervention is absolutely needed. They further show the enforcement of protective orders is working to reduce abuse and violence in family and intimate relationships.

In this case, the victim, Kirby, and Sergeant Whitman, Officer Bowling, and Officer Diekman, did it by the book. The respondent to the Protection Order, Combs, should not be permitted under the law to pursue civil liability from the police where they acted to enforce the Order by entering an apartment to properly seize baby Tyler.

An Ohio Court, upon Kirby's application, issued that Order against Combs. The Order prohibited Combs from having contact with Kirby. The Order also included custody and visitation provisions for Combs and Kirby's child. This was a violent and troubled relationship,[9] like so many others across this country, and the Order was put in place to protect Kirby from Combs, as well as to allow Kirby the opportunity to safely see and raise her child.

The Officers were dispatched to Combs' apartment after the police were called and told that Combs was violating the Domestic Violence Protection Order. To enforce the Order, it is obvious the officers would have

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[9] In addition to Combs perpetrating violence against Kirby, Carpenter also physically assaulted Kirby approximately a year before the incident at issue in this case and Combs' mother repeatedly threatened Kirby in the presence of the Officers, saying she would "kick Kirby's ass if she got her hands on her." (301a-302a)

had to enter Combs' apartment to obtain possession of the baby, whom Combs was refusing to turn over to Kirby.

This Court recently addressed the exact opposite side of this all too common situation in *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 125 S.Ct. 2796 (2005). In *Castle Rock*, a domestic violence protective order, similar to the one at issue in this case, was in place between a woman and her estranged husband. Like in this case, the order contained provisions governing the estranged husband's visitation and custody of the couple's three children. *Id.* Also like in this case, the estranged husband refused to comply with the order with respect to the visitation of the children, and the husband took the children at a time prohibited by the order. *Id.*

Like in this case, the mother called the police to report the estranged husband's noncompliance with the domestic violence protection order. *Id.* However, unlike in this case, the Colorado police officers did not respond to the mother's call. *Id.* The estranged husband murdered the couple's three children. *Id.* The mother later pursued due process claims against the police who failed to respond to her call. *Id.*

Although this Court ultimately held that the mother in *Castle Rock* had no viable cause of action there, the Court did offer this statement of caution:

> Although the framers of the Fourteenth Amendment and the Civil Rights Act of 1871, 17 Stat. 13 (the original source of § 1983), did not create a system by which police departments

> are generally held financially accountable for crimes that better policing might have prevented, the people of Colorado are free to craft such a system under state law.

Id. at 768-69.

In their dissent in *Castle Rock*, Justices Stevens and Ginsburg expanded on this statement from the majority, noting that fifteen states have enacted statutes that mandated arrest for domestic violence offenses, and nineteen states have mandated arrest for domestic restraining order violations. *Id.* at 781.

Ohio is indeed one of the states striving to protect victims of domestic violence, and the children of those couples. Ohio mandates law enforcement to enforce domestic violence protection orders. Ohio Revised Code § 3113.31(F)(4) directs as follows:

> (4) Regardless of whether the petitioner has registered the order or agreement in the county in which the officer's agency has jurisdiction pursuant to division (N) of this section, ***any officer of a law enforcement agency shall enforce a protection order issued or consent agreement approved by any court in this state in accordance with the provisions of the order or agreement, including removing the respondent from the premises, if appropriate.***

(68a)(emphasis added)

One District Court in Ohio has held that Ohio Revised Code § 3113.31 created a property interest that triggers substantive due process rights, reasoning as follows:

> Under O.R.C. § 3113.31, a person may seek a protective order to prevent a relative or household member from abusing other family members. Plaintiff sought and obtained such a protective order in this case. This Court believes that such an order creates a property right which incurs a duty on the part of the government.

Siddle v. City of Cambridge, Ohio, 761 F.Supp. 503, 509 (S.D. Ohio 1991).

Many states, including Ohio, have enacted statutes that may expose police officers to the liability discussed by the majority and the dissent in *Castle Rock*. While the case at bar does not call upon the Court to comment on whether O.R.C. § 3113.31 creates a property interest for Ohio citizens,[10] cases like *Siddle*, and statutes like O.R.C. § 3113.31, do require police officers to enforce domestic violence protection orders.

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[10] After all, the officers in this case were enforcing the Domestic Violence Protection Order, which is entirely different than scenarios such as the ones in *Castle Rock*, or even *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989), where police officers' inactivity or non-responsiveness triggered claims for liability.

The officers in this case enforced the Order when baby Tyler was removed from the apartment. Combs admits this by conceding that the "seizure" of Tyler was lawful. It makes no legal or factual sense to interpret the relevant law, as the lower courts have, to conclude the Officers are not entitled to qualified immunity for their act of entering the apartment to seize Tyler. No clear law exists under these facts to deprive the Officers of their entitlement to immunity. And, the lower courts cite none when denying the Officers qualified immunity.

Even in the absence of statutory mandates, police officers face a quandary when responding to domestic violence protective order violation calls, such as the one at issue in this case. For example, if the Officers had arrested Combs in the hallway, and left the baby in the apartment without his custodial parent, and some harm would have come to the baby, Kirby, or even Combs, may have brought suit against the Officers. As the Seventh Circuit noted,

> If the state puts a man in a position of danger from private persons and then fails to protect him, it will not be heard to say that its role was merely passive; it is as much an active tortfeasor as if it had thrown him into a snake pit.

Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).

As such, the Sixth Circuit's decision in this case places police officers in the position of facing a double-edged sword of potential liability when they are faced with situations such as this one. The police can either

enter the premises to take an infant child into protective custody, and face liability for an unlawful entry, or the police can leave the infant child in the apartment and face potential "snake pit" liability. For this reason, it is asked this Court accept jurisdiction over this case to provide the much-needed direction to the lower courts on this far-reaching legal issue that is in a state of conflict.

II. The Court should take this opportunity, in the context of an excessive force case, to reconcile the inherent conflict created by the directives of *Saucier v. Katz*, which require courts to give deference to police officers on the scene, and the standard for deciding summary judgment motions, which requires courts to construe all self-serving statements in claimants' affidavits in favor of claimants.

The Sixth Circuit, like the District Court, denied qualified immunity to the Officers with respect to Carpenter's claim for the use of alleged excessive force in her arrest. The Sixth Circuit, in affirming the District Court, ruled that Carpenter's self-serving affidavit created questions of fact, and allowed those sworn statements to deprive the Officers of qualified immunity. Because the Officers' perceptions are owed deference, as a matter of law, and because Carpenter's deposition testimony, obtained after she executed her self-serving affidavit, supported the Officers' entitlement to qualified immunity on the excessive force claim, this case exemplifies why the Court should reconcile the current conflict of law.

A. *Graham v. Connor* requires the use of force to be evaluated from the perspective of a reasonable police officer at the scene.

The Sixth Circuit's analysis failed to appreciate this Court's direction in *Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001), and again set forth in *Brosseau v. Haugen*, 543 U.S. 194 (2004). In *Saucier*, the Court explained that qualified immunity analysis extends further than the Fourth Amendment's "reasonableness" standard, set forth in *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865 (1989). In *Graham*, the Court held that the Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham*, 490 U.S. at 395-96. The "reasonableness" of a particular use of force ***must be judged from the perspective of a reasonable officer on the scene***, and "its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation." *Id.*

B. *Saucier v. Katz* further directs that qualified immunity analysis allows police officers to make reasonable mistakes as to the legal constraints on the use of force.

In *Saucier*, the Court rejected an argument that the *Graham* test could not be distinguished from the test to determine qualified immunity, and explained the distinction as follows:

The qualified immunity inquiry, on the other hand, has a further dimension. ***The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct.*** It is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. An officer might correctly perceive all of the relevant facts but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances. ***If the officer's mistake as to what the law requires is reasonable, however, the officer is entitled to the immunity defense.***

Graham does not always give a clear answer as to whether a particular application of force will be deemed excessive by the courts. This is the nature of a test which must accommodate limitless factual circumstances. This reality serves to refute respondent's claimed distinction between excessive force and other Fourth Amendment contexts; in both spheres the law must be elaborated from case to case. ***Qualified immunity operates in this case, then, just as it does in others, to protect officers from the sometimes "hazy border between excessive and acceptable force,"*** *Priester v. Riviera Beach*, 208 F.3d 919, 926-927 (C.A.11 2000), ***and to ensure that before they***

> ***are subjected to suit, officers are on notice their conduct is unlawful.***

Saucier, 533 U.S. at 205-206 (emphasis added).

As such, both *Graham* and *Saucier*, and *Brosseau*, direct that courts must give deference to a reasonable police officer at the scene in deciding issues of qualified immunity, as well as the "reasonableness" inquiry of the Fourth Amendment.

C. The Court needs to review this case in order to provide courts guidance in how to apply *Saucier*, and *Graham*, to motions for summary judgment, when a self-serving affidavit is submitted solely for the purpose of manufacturing a question of fact.

In the case at bar, the lower courts have ignored the above-mentioned aspect of qualified immunity as set forth in *Saucier*. The rationale for ignoring this aspect of qualified immunity analysis can perhaps be gleaned from the standard for deciding summary judgment motions, which was recently described as follows:

> As this case was decided on summary judgment, there have not yet been factual findings by a judge or jury, and respondent's version of events (unsurprisingly) differs substantially from Scott's version. When things are in such a posture, courts are required to view the facts and draw reasonable inferences "in the light most favorable to the party opposing the

> [summary judgment] motion." *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962) (per curiam); *Saucier*, supra, at 201, 121 S.Ct. 2151. ***In qualified immunity cases, this usually means adopting (as the Court of Appeals did here) the plaintiff's version of the facts.***

Scott v. Harris, 127 S.Ct. 1769, 1774-75, 167 L.Ed.2d 686 (2007)(emphasis added).

The inherent conflict this creates with *Saucier* and *Graham* becomes apparent in the case at bar. How can a court give deference to police officers on the scene when, at the summary judgment phase, courts must construe facts in favor of the non-moving party, which will be the claimant in most cases? Under such circumstances, a claimant may overcome summary judgment by simply submitting self-serving statements in virtually any claim for alleged excessive force. As the Court noted in *Saucier*, this would undermine the goal of qualified immunity, which is to "avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment." *Saucier*, 533 U.S. at 202.

As is often the case in claims such as this, Carpenter submitted an affidavit riddled with inflammatory words, such as "crush," "forcibly," and "slam." The Sixth Circuit cites these words at the end of its decision, concluding that questions of fact prevented application of qualified immunity for the Officers. In placing such emphasis on Carpenter's self-serving statements in her affidavit, the Sixth Circuit does not even mention what, if any, deference was

given to the officers, who were dispatched to an emotionally-charged scene to arrest Combs for violating the Domestic Violence Protection Order in place.

The *Scott* case started to reconcile the conflict when the Court dealt with a case in which the arrestee's version of the events was contradicted by a video of the events in question. *Scott*, 127 S.Ct. 1769. The Court noted as follows:

> ***When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.***
>
> That was the case here with regard to the factual issue whether respondent was driving in such fashion as to endanger human life. Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. ***The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape***.

Id. at 1776 (emphasis added).

The *Scott* case is similar to the case at bar, where Carpenter's affidavit statements are disputed by her own deposition testimony on the key points at issue. For instance, Carpenter's affidavit states she "told the

police they were wrong" for taking Combs' child (144a), while she later testified at her deposition that she never told the police they were wrong to take the child. (277a) Carpenter's affidavit states Officer Bowling was "trying to trip her," but she chose not to include this as a fact that occurred during her arrest when cross-examined at her deposition. Carpenter's affidavit states she was "forcibly" pushed into a van, and "made a dent in the van with my body," but she denied that the van was dented during her deposition. (318a) Further, Carpenter could have, but did not, use the same inflammatory words that appear in her affidavit when giving her deposition testimony.[11]

The lower courts should not have been constrained to accept Carpenter's version of the incident, as set forth in Carpenter's self-serving affidavit, and at the same time, ignore her very different deposition testimony. Instead, lower courts should be permitted to analyze claims for alleged excessive use of force from the perspective of the officers on the scene, as *Saucier* and *Graham* direct.

If this legal standard is not further clarified for lower courts, the doctrine of qualified immunity will indeed be stripped of all meaning by the filing of self-serving affidavits, sworn by plaintiffs and witness who support plaintiffs' cause, to overcome their testimony given in depositions. And, the deference that should

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[11] In considering the affidavit testimony, which conflicted with Carpenter's deposition testimony, the Sixth Circuit disregarded its own precedent, which holds that such affidavits may not be considered for summary judgment purposes. *Yanovich v. Zimmer Austin*, 255 Fed. Appx. 957, 961 (6th Cir. 2007).

be granted to the on-scene police officers will lose all meaning as well.

D. Deference should be given to the police officers on the scene, and not to a self-serving affidavit sworn by the arrestee, used to manufacture a question of fact.

In this case, the Officers were dispatched in response to Combs' violation of a Domestic Violence Protection Order. In addition to Combs and the baby, many of Combs' family members were present in his apartment at the time of his arrest, including his sister, Carpenter, and Combs' mother, and girlfriend. It is undisputed in the record that Combs and his family members were upset and crying, and threats were being made by Combs' family members against Kirby, who was waiting in the parking lot for the Officers to bring her baby to her. This was undeniably an emotionally-charged atmosphere. The actions of Sergeant Whitman and Officers Bowling and Diekman must be judged from the perspective of a reasonable officer responding to the scene of an emotionally-charged atmosphere in the context of a violation of a domestic violence protection order, and given proper deference. The Sixth Circuit, like all other federal courts, is in need of law on this issue because without identifying clearly established law, it wrongly decided the Officers' entitlement to qualified immunity from suit.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham*, 490 U.S. at 395-96 (citing *Terry*

v. Ohio, 392 U.S. 1, 20-22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). Because "police officers are often forced to make split-second judgments, in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation," the reasonableness of the officer's belief as to the appropriate level of force should be judged from that on-scene perspective. *Saucier*, 533 U.S. at 205 (citing *Graham*, supra, at 397).

It is undisputed in the record that Carpenter was upset during Combs' arrest, and especially when the baby was taken from her and given to Kirby. It is undisputed that Officer Bowling took Carpenter aside before her arrest, and warned her she needed to calm down because she was not helping the situation. Deference is owed to the Officers' account because they face these situations every day. While Carpenter and her family had more police involvement than most, they were emotionally-charged and did, by way of Carpenter's self-serving affidavit, trump up the events to defeat an otherwise proper summary judgment motion seeking an award of qualified immunity for the Officers.

It is further undisputed that the Officers did all they could to diffuse the emotionally-charged situation, including allowing Carpenter to leave the scene to look for paperwork that Carpenter falsely claimed would exonerate Combs, taking the time to speak to Combs' attorney, and even calling Children's Services to make sure it was okay to give custody of the child to Kirby. None of this pacified Carpenter, who remained upset and intentionally followed the Officers to the parking

lot, where it is undisputed that Carpenter yelled at Kirby, triggering Carpenter's arrest.

The Court should take this case to make it clear to all lower federal courts that the law requires this case, and all cases like it, to be analyzed under Rule 56 from this perspective, rather than the self-serving affidavit of Carpenter, which is riddled with, at best, statements unsupported in the record, and at worst, outright lies. Such an affidavit is created for the sole and exclusive purpose of defeating an otherwise proper request for qualified immunity for the Officers. A rule of law clarifying the standard used in immunity challenges is needed. Under such analysis, the Sixth Circuit's decision should be reversed on the basis that the Officers committed no constitutional violation during the arrest of Carpenter.

CONCLUSION

For all of the foregoing reasons, this Court should grant Sergeant Whitman, Officer Bowling and Officer Diekman's petition and reverse the Sixth Circuit's decision.

Respectfully Submitted,

Lynnette Ballato Dinkler
Counsel of Record
Jamey T. Pregon
Subashi, Wildermuth & Dinkler
50 Chestnut Street, Suite 230
The Greene Town Center
Dayton, OH 45440
Phone: (937) 427-8800
Fax: (937) 427-8816

Counsel for Petitioners

APPENDIX A

NOT RECOMMENDED FOR
FULL-TEXT PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[Filed May 2, 2008]

No. 07-3100

LADAWNYA K. CARPENTER et al.,	)
	)
Plaintiffs-Appellees,	)
	)
v.	)
	)
LESLIE WAYNE BOWLING et al.,	)
	)
Defendants-Appellants.	)
	)

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO

Before: BATCHELDER and SUTTON, Circuit Judges; and BARZILAY, Judge.*

SUTTON, Circuit Judge. Three City of Franklin (Ohio) police officers argue that the district court erred in denying their motion for summary judgment with respect to Charles Combs' unlawful-arrest and unlawful-entry claims and Ladawnya Carpenter's excessive-force claim. We affirm.

I.

In July 2002, an Ohio court entered a consent agreement between Sarah Kirby and Charles Combs concerning the custody of their ten-month-old son, Tyler. The agreement gave Combs custody of Tyler from Sunday at 6:00 p.m. to Friday at 6:00 p.m., and it gave Kirby custody from Friday at 6:00 p.m. to Sunday at 6:00 p.m. All exchanges of Tyler, the agreement said, would "take place at [the] Franklin police department." JA 58.

On at least two occasions, Combs failed to bring Tyler to the police department on Friday evening, prompting Kirby to file a motion to hold Combs in contempt of court for violating the consent agreement. On August 16, when Combs again failed to bring Tyler to the station, Kirby told the police that she "had filed for contempt of court" against Combs, that Combs "was supposed to bring Tyler to the station" and "that there

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* The Honorable Judith M. Barzilay, Judge of the United States Court of International Trade, sitting by designation.

was a warrant for [Combs]." JA 201. The officers responded by going to Combs' apartment.

Combs answered the officers' knock on his door, and, after a brief discussion, the officers arrested him for violating the consent agreement. The arrest, according to all parties, occurred outside Combs' apartment. LaDawnya Carpenter, Combs' sister, who (along with Combs' mother and girlfriend) was visiting Combs at the time, told the officers that she had temporary custody papers at her house that would exonerate her brother. The officers told Carpenter to get the papers.

When Carpenter returned without the custody papers, she called Combs' attorney to determine whether the officers could arrest him without a warrant. After Carpenter handed him the phone, Officer Russell Whitman spoke to Combs' attorney, who informed him that the consent agreement had not been modified. Whitman also spoke with a representative of the Warren County Children's Services, who told him that Kirby "had the right to take the child." JA 79. Whitman then took Tyler from Carpenter, carried him out of the apartment and gave him to Kirby, who was waiting in the parking lot.

According to at least one of the officers, Carpenter "was screaming profanities" and "throwing objects about in the apartment" as "the officers were leaving the apartment with the child." JA 62. Carpenter denies these allegations. JA 125. Carpenter followed the officers into the parking lot and ultimately was arrested for disorderly conduct, a charge later dismissed, as was the charge against Combs.

In August 2003, Combs, Tyler and Carpenter filed a § 1983 action against the City of Franklin, Kirby and Officers Bowling, Whitman and Diekman in Ohio state court. The defendants removed the action to federal court, and the officers moved for summary judgment on qualified immunity grounds. The district court granted the motion with respect to the unlawful-arrest claim, holding that the officers had probable cause to arrest Combs. It denied the motion with respect to the unlawful-entry claim, reasoning in part that exigent circumstances did not justify the entry. And it denied the motion with respect to the excessive-force claim, reasoning that disputes of material fact remained over Carpenter's conduct and the officers' explanations for using force. Officers Bowling, Whitman and Diekman filed this interlocutory appeal. *See Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985).

II.

To overcome a defendant's claim of qualified immunity, a plaintiff must establish (1) that the defendant violated a "constitutional right" and (2) that the right "was clearly established." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). We must decide the first question, the Supreme Court has instructed, before we reach the second one. *Id.* at 200–01.

A.

The officers start, oddly enough, by arguing that "[t]he trial court erred by not granting the officers qualified immunity for the warrantless arrest claim of Charles Combs." Br. at 1. That is odd because, as we have just explained, the district court *granted*

summary judgment *for the officers* on this claim. Since the officers cannot appeal a victory and since Combs has not appealed this loss, that is the end of the matter.

B.

The officers next challenge the district court's conclusion that a triable issue of fact exists over Combs' unlawful-entry claim. We reject that challenge. While the officers say that Combs consented to their waiting in his apartment after his arrest and while consent is an acceptable basis for entering a person's home without a warrant, *see Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990), the summary-judgment record establishes a dispute over whether the officers indeed had consent to enter the home. Carpenter's and Combs' affidavits, for example, both say that the officers "forced their way into the apartment." JA 165, 184. Even though it remains unclear what cognizable harm Combs suffered as a result of the officers' entry—as he did not appeal the district court's conclusions that his arrest and the seizure of Tyler were lawful and as the entry seemingly benefitted him by allowing his sister time to contest his arrest—we affirm the district court's denial of the officers' claim for summary judgment on Combs' unlawful-entry claim.

C.

The officers next contest the district court's excessive-force ruling, arguing that the court should have rejected Carpenter's claim as a matter of law. Under the Fourth (and Fourteenth) Amendment,

individuals have a right to be free of excessive force when police arrest or seize them. *See Lyons v. City of Xenia*, 417 F.3d 565, 575 (6th Cir. 2005). Whether excessive force exists turns on the objective reasonableness of the officer's conduct in view of the circumstances facing the officer, an inquiry that accounts for "[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight." *Id.* (internal quotation marks omitted and alterations in original); *see also Graham v. Connor*, 490 U.S. 386, 394–96 (1989).

When we construe the facts in Carpenter's favor, as we must, here is what happened: After the officers removed Tyler from the apartment and gave him to Kirby, Carpenter waited a moment, then went outside. Upon emerging from the building, Carpenter saw Kirby 30 to 40 feet away and shouted, "remember, Sunday at 6:00," reminding Kirby of her obligation to return Tyler to Combs on Sunday evening. JA 126. Carpenter insists she never cursed at Kirby and "wasn't threatening [her]." JA 128.

"Before [Carpenter] could even get [her] breath back [from shouting at Kirby], Officer Bowling had ahold of [her], screaming that he had had it with [her and] was sick of [her]." *Id.* After grabbing Carpenter from behind by both arms, Bowling "proceeded to shove [her] down the sidewalk," JA 129, and "body slammed [her] into a van parked in front of the apartments," JA 181. All the while, Carpenter was telling Bowling that he did not "have to do this" because she would voluntarily "turn around and let

[him] arrest [her]." JA 129. After pinning Carpenter against the van, Bowling "jerk[ed] hard on [her] arms," JA 132, and Officer Diekman "stuck his knee in [Carpenter's] back" and "grabbed [Carpenter's] other shoulder," JA 131. The officers then "repeatedly crushed [Carpenter] against the van while pulling back on both [of her] arms," making "a dent in the van." JA 186. "[N]ot sure what [the officers were] doing"—trying to handcuff her or injure her—Carpenter told them that "they were hurting [her]" and "continuously sa[id] please don't do this. I will stand up. I will let you handcuff me. I will let you arrest me. You don't have to do this to me." JA 131–32. Carpenter thus "wasn't fighting [the officers]" and "wasn't resisting arrest," though she admits that she lifted her head several times to plead for mercy. JA 132. Carpenter felt her "shoulder pop[]" while the officers jerked her arms, JA 131, and suffered injuries to her arms and shoulders during the arrest, requiring an emergency-room visit on the day after the arrest and periodic medical treatment and physical therapy since then.

As measured by the three factors identified in *Lyons* and *Graham*, these record-supported allegations create a triable issue of fact over whether the officers used excessive force. *First*, the charge at issue was disorderly conduct, and "[t]he crime of disorderly conduct" generally "is not a violent or serious crime, and this fact weighs in favor of using less force in arresting [someone for such conduct]." *Thacker v. Lawrence County*, 182 F. App'x 464, 472 (6th Cir. May 17, 2006). *Second*, nothing suggests that Carpenter posed a threat to the officers, and although Carpenter raised her voice at Kirby (who was 30 or 40 feet away)

she "wasn't threatening her," never cursed at her, was "not angry" with her and never made a move toward Kirby. JA 126, 128. *Third*, nothing suggests that Carpenter posed a risk of flight. "At all times," Carpenter "told Bowling that [she] was not going to resist him," and yet he still "was hurting [her]." JA 186. In view of the non-threatening nature of Carpenter's offense, the absence of any resistance by Carpenter and the absence of any threat to anyone, a jury crediting these fact-supported allegations could find that the officers used constitutionally excessive force.

The district court also correctly determined that case law clearly established this constitutional claim. *See St. John v. Hickey*, 411 F.3d 762, 772, 774 (6th Cir. 2005)("[W]e conclude the right of a nonviolent [and non-resistant] arrestee to be free from unnecessary pain knowingly inflicted during an arrest [for disorderly conduct] was clearly established as of November 9, 2000."); *see also Minchella v. Bauman*, 72 F. App'x 405, 408–09 (6th Cir. Aug. 13, 2003) (denying summary judgment to officers on an excessive-force claim—relating to an arrest in 1999—because the plaintiff's "crime was not severe," the plaintiff "posed no threat to the Officers or the community" and the evidence was "inconclusive as to whether [the plaintiff] was 'slammed' into the car, and . . . as to whether [the plaintiff] physically resisted the arrest"); *Davis v. Yovella*, No. 95-5415, 1997 WL 159363, at *5–6 (6th Cir. Apr. 2, 1997) (denying qualified immunity to an officer on an excessive-force claim because "the charges against [the plaintiff] . . .were not serious," "there [was] no evidence that [the plaintiff] posed a risk to the officers or anyone present," "the record show[ed]

that he did not resist arrest" and the plaintiff "sought medical attention for pain in his neck and back").

The officers complain that this conclusion fails to appreciate the risk of escalation they faced—as Carpenter was visibly upset about the situation with her brother, ha[illegible]oiced her frustrations to the officers and had previously been accused of harassing Kirby (several months earlier). Yet virtually any arrest of an individual by the police poses a risk of resistance and escalation. The question is whether that risk was real at the time the officers used force and, more pertinently, whether a triable issue of fact exists over that risk. Carpenter was 30 or 40 feet from Kirby and claims not to have done anything more than remind Kirby to return Tyler on Sunday. A jury could thus reasonably conclude, if it credited these factual allegations, that the police had no basis for immediately grabbing, sho[illegible]ng, body slamming and repeatedly crushing Carpenter against a van to prevent the situation from escalating. Even if we were to grant the officers' premise that they had a reasonable basis for fearing that the situation might escalate, moreover, that would not necessarily justify repeatedly crushing Carpenter against a van while jerking back hard on her arms—all in the context of arresting her for a relatively minor and non-threatening crime, one for which she "[a]t all times" did not resist the officers (save for raising her head to ask them to stop).

The officers also contend that the district court should have ruled for them as a matter of law because Carpenter's injuries were either *de minimis* (temporary scrapes and red marks) or pre-existing (her

alleged shoulder injuries). But the record does not unequivocally establish either point. Carpenter went to the emergency room on the day after her arrest, complaining of shoulder pain and bruising, and she has "actively receiv[ed] medical treatment for the injuries caused by the Franklin police officers." JA 186. While Carpenter previously had surgery on her left shoulder, that shoulder was "back to normal" by 1995 or 1996, well before her arrest. JA 107.

The officers add that Sergeant Whitman played no role in the arrest and indeed that Carpenter did not even allege that he participated in Carpenter's arrest. Both contentions fail to account for Whitman's affidavit, in which he admitted that he "assisted Officer Bowling [in] handcuff[ing] Carpenter" and in which he "den[ied] Plaintiffs' allegations that [he] pushed or slammed Carpenter into a van." JA 80. The second amended complaint, as well as other evidence in the record, shows that Carpenter did implicate Whitman in her claim. *See* JA 14 (alleging that "Bowling, *Whitman* [and] Diekman" arrested Carpenter "with unreasonable and excessive force") (emphasis added); JA 186 (Carpenter's affidavit indicating that "Officer Bowling and the *two* other Franklin Police officers forcibly pushed [her] into the side of a van parked in the parking lot and made a dent in the van with [her] body") (emphasis added).

The resolution of Carpenter's excessive-force claim in the end turns on several genuine issues of material fact, including at a minimum these: Was Carpenter walking toward, cursing at or otherwise threatening Kirby at the time of her arrest? Did the officers repeatedly body slam or crush Carpenter against the

van and jerk back unreasonably hard on her arms? And did Carpenter resist the arrest or the officers' attempt to handcuff her? "[W]hen the legal question of immunity is completely dependent upon which view of the facts is accepted by the jury, the jury becomes the final arbiter of a claim of immunity." *Bouggess v. Mattingly*, 482 F.3d 886, 888 (6th Cir. 2007) (internal quotation marks and alteration omitted).

III.

For these reasons, we affirm.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

[Filed January 10, 2007]

Case No. 1:05-cv-323

LADAWNYA K. CARPENTER, *et al.*,

Plaintiffs,

vs.

CITY OF FRANKLIN, OHIO, *et al.*,

Defendants.

U.S. Magistrate Judge Timothy S. Black

SUPPLEMENTAL MEMORANDUM OPINION AND ORDER

On December 22, 2006, this Court entered a Memorandum Opinion and Order granting in part and denying in part Defendants' motion for summary judgment. (Doc. 28). (The underlying facts are set out in detail in that Opinion and will not be repeated here.)

Defendants included in their motion for summary judgment an assertion that the defendant police officers are entitled to qualified immunity with respect to Plaintiff Ladawnya Carpenter s claim that the officers used excessive force in effecting her arrest on a charge of disorderly conduct. The purpose of this Supplemental Memorandum Opinion and Order is to address that assertion. For the reasons that follow, the Court finds that Defendants are not entitled to entry of summary judgment upon qualified immunity with respect to that claim as material questions of fact exist as to whether or not the police officers violated clearly established law and whether or not they are entitled to qualified immunity.

DISCUSSION

"Qualified immunity is an affirmative defense that shields government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Estate of Carter v. City of Detroit*, 408 F.3d 305, 310 (6th Cir. 2005) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

To determine whether the officers are entitled to qualified immunity, the court must determine first, "whether, considering the allegations in a light most favorable to the party injured, a constitutional right has been violated," and second "whether that right was clearly established." *Id.* The court may also consider "whether the plaintiff offered sufficient evidence to indicate that what the official[s] allegedly did was objectively unreasonable in light of the clearly

established constitutional rights." *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 905 (6th Cir. 2004), *cert. denied sub. nom. Dickhaus v. Outlook Nashville, Inc.*, 544 U.S. 975 (2005).

This Court previously expressed that the offense for which Carpenter was arrested, disorderly conduct, is not a heinously serious crime (Doc. 28 at p. 27 (citing *Thacker v. Lawrence County*, 182 Fed. Appx. 464, 472 (6th Cir. 2006)), and that genuine issues of material fact exist as to whether or not Carpenter posed a threat to the safety of the officers or others, whether or when she was told that she was under arrest, and whether or not she resisted the officers' attempt to restrain her or to handcuff her (*id.* at pp. 27-28).

Because the facts are in dispute, and construing the allegations in a light favorable to Carpenter, the Court finds that she has alleged sufficient facts,[1] if proven, to establish a constitutional violation under the circumstances presented in this case.

In the motion for summary judgment, Defendants further argue that the officers are entitled to qualified immunity because the law surrounding the use of force was not clearly established at the time of the underlying arrest and in light of the particular facts of the case. (*See* Doc. 10 at p. 35.) This argument is not persuasive.

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[1] See Carpenter's Affidavit (Doc. 13-3, p. 9, ¶¶ 13-19;); see also Affidavit of Mary Zolecki (Doc. 13-3, pp. 4-5).

It was clearly established at the time of Carpenter's arrest – August 16, 2002 – that it would be unreasonable to use the amount of force alleged here against a suspect who allegedly poses no apparent threat and allegedly is not resisting the officer's attempt to arrest her. *See, e.g., Baker v. City of Hamilton*, ___ F.3d ___, 2006 WL 3702914, at *6 (6th Cir. Dec. 18, 2006) (noting that the right of people who pose no safety risk to the police to be free from gratuitous violence during arrest was clearly established in December 2002); *see also Lustig v. Mondeau*, No. 05-1905, 2006 WL 3253496, at *7 (6th Cir. Nov. 8, 2006)).

Accordingly, and for the reasons stated above, **IT IS HEREIN ORDERED THAT** Defendants' motion for summary judgment (Doc. 10) is **DENIED** in part with respect to Defendants' assertion that they are entitled to qualified immunity on Carpenter's excessive force claim. The pretrial record sets forth genuine issues of material facts for trial.

IT IS SO ORDERED.

Date: 1/10/07 s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

[Filed December 22, 2006]

Case No. 1:05-cv-323

LADAWNYA K. CARPENTER, *et al.*,

Plaintiffs,

vs.

CITY OF FRANKLIN, OHIO, *et al.*,

Defendants.

U.S. Magistrate Judge Timothy S. Black

MEMORANDUM OPINION AND ORDER

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. The case is before the Court on defendants' motion for judgment on the pleadings (Doc. 8), defendants' motion for summary judgment (Doc. 10), and plaintiffs' second motion to remand (Doc. 14). Also pending is a motion by defendants for leave to supplement their motion for summary

judgment with an expert opinion. (Doc. 25.) The parties have consented to final disposition by the magistrate judge pursuant to 28 U.S.C. § 636(c). (*See* Docs. 19, 23).

For the reasons that follow, the motion for judgment on the pleadings is **GRANTED**; the motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**; and the second motion for remand is **DENIED**. The motion for leave to supplement is also **DENIED**.

I. BACKGROUND

A. The Parties

Plaintiffs LaDawnya K. Carpenter ("Carpenter"), Charles N. Combs ("Combs"), and Tyler Combs ("Tyler") (collectively "plaintiffs") are residents of the City of Franklin, Ohio. (Doc. 1, Att. 1 at p. 4, ¶ 6.) Tyler, a minor child, is Combs's son. (*Id.* at p. 4, ¶ 7.) Carpenter is Combs's sister. (*Id.* at p. 8, ¶ 34.)

Named defendants include the City of Franklin, Ohio, four members of the Franklin Police Department, Lt. Leslie W. Bowling, Sgt. Russell Whitman, Officer Diekman, and Officer Troy Wolf; and a Prosecutor for the City of Franklin, Steven Runge. (*Id.* at p. 4, ¶ 5.) Sarah Kirby ("Kirby"), who is Tyler's mother (and Combs's ex-girlfriend), was also named as a defendant in the original complaint. (*See* Doc. 8, Ex. A at p. 6, ¶ 2.)

B. Factual Allegations

In July 2002, Kirby had filed a civil action in the Warren County Court of Common Pleas against Combs for entry of a domestic violence protection order. (*Id.* at p. 6, ¶ 3.) As a result of a hearing held on July 8, 2002, which Combs and Kirby both attended, the state court entered an Order of Protection, which both Kirby and Combs signed, which provided, among other things, for the temporary custody of Tyler to be with Combs during the weekdays from Sunday at 6:00 p.m. to Friday at 6:00 p.m.; and the temporary custody of Tyler to be with Kirby on the weekends from Friday at 6:00 p.m. to Saturday at 6:00 p.m. (Doc. 8 at p. 4.) The domestic violence protective order entered by the state court also provided that "all exchanges to take place at Franklin Police department." (*Id.*)

On the evening of Friday, August 16, 2002, after Combs had failed to bring Tyler to the police station for the 6:00 p.m. transfer to Kirby, officers Wolf, Bowling, Whitman and Diekman appeared with Kirby at Combs's home. The officers allegedly entered the home without a search warrant or an arrest warrant in their possession and arrested Combs for violating the protective order and seized Tyler and transferred him into Kirby's physical custody. (Doc. 1, Att. 1 at p. 5, ¶ 10; Doc. 8, Ex. A at pp. 3-4, ¶ 4.)

Carpenter was present at Combs's home on August 16, 2002. (Doc. 1, Att. 1 at p. 8, ¶ 34.) Although Carpenter objected to the intended transfer of Tyler to Kirby, she was trying to dress him when one of the officers took Tyler from Carpenter, carried him

outside, and delivered him to Kirby, who then left with the child. (Doc. 13, Ex. 6 at ¶ 8.)

Alas, Carpenter followed the officers outside, allegedly simply to remind Kirby to bring the child back the following Sunday. (*See id.* at ¶¶ 9-10.) Carpenter was then arrested for disorderly conduct. (*Id.* at ¶ 37.) According to plaintiffs, an officer then "manhandled" Carpenter by throwing her against a van, pulling her arms back, and pushing her into the van. (Doc. 1, Att. 1 at p. 8, ¶ 35.) The charge against Kirby for disorderly conduct was dismissed on January 17, 2003, on statutory, speedy trial grounds. (*Id.* at p. 9, ¶ 43.)

The criminal proceedings against Combs were terminated in his favor on January 28, 2003. (Doc. 8, ex. A at 4-5, ¶ 9; Doc. 10, Ex. D.)

C. Procedural Hlistory

Plaintiffs initiated this action on August 8, 2003, by filing a complaint in the Warren County Court of Common Pleas against the City of Franklin, Lt. Bowling, Sgt. Whitman, Officer Diekman, and Sarah Kirby. (*See* Doc. 8, Ex. A). An amended complaint was filed on December 15, 2003. (*Id.*, Ex. B.)

On October 7, 2004, plaintiffs sought leave to file a second amended complaint withdrawing claims against Sarah Kirby and adding claims against two additional defendants, Officer Troy Wolf and Franklin City Prosecutor Steven Runge. (*Id.* at 2730.) Leave to file the amended complaint was granted over

defendants' objections on April 22, 2005. (*See* Doc. 1, Att. 1.)

On May 3, 2005, the state court judge, Hon. Neal B. Bronson, issued a decision granting in part and denying in part a motion for summary judgment by the City of Franklin, Lt. Bowling, Sgt. Whitman, and Officer Diekman. (Doc. 8, Ex. E.)

On May 11, 2005, Wolf filed a notice removing the state court action to federal court on the basis of federal question jurisdiction. (Doc. 1.) All of the other defendants consented to and joined in the removal. (*See id*; *see also* Doc. 16.)

Plaintiffs filed a motion to remand on the grounds that the removal was untimely and that the notice of removal was defective. (*See* Doc. 5.) On March 27, 2006, the motion to remand was denied by United States District Judge Michael H. Watson. (Doc. 16.)

On February 17, 2006, defendants filed a motion for judgment on the pleadings seeking to dismiss Officer Troy Wolf and Prosecutor Steven Runge. (Doc. 8.) The motion is unopposed. (*See* Doc. 14.)

On February 17, 2006, defendants separately filed a motion for summary judgment. (Doc. 10.) As grounds for their motion, defendants argue, *inter alia*, that plaintiffs have failed to establish any constitutional violations and that the individual police officers are entitled to qualified immunity. (*See id.*) Plaintiffs have filed a memorandum in opposition to the motion for summary judgment (Doc. 13), to which defendants have replied (Doc. 15). On October 19,

2006, defendants filed a motion to supplement their motion for summary judgment with an opinion letter from a law enforcement expert. (Doc. 25.)

On March 11, 2006, plaintiffs filed a second motion to remand this case to state court. (Doc. 14.) Plaintiffs state that, if the unopposed motion for judgment on the pleadings is granted, and Troy Wolf – the defendant who initiated the removal from state court – is dismissed, the Court's jurisdiction would terminate.

D. The Claims

The second amended complaint includes eight counts alleging unlawful conduct by defendants.

In Count I, plaintiffs allege that the officers' entry into Combs's home without a warrant and his arrest without a warrant violated his rights under the Fourth and Fourteenth Amendments. (Doc. 1, Att. 1 at ¶¶ 8-10.) Plaintiffs further allege that the officers' failure to prevent the entry into the home constitutes a separate violation of Combs's rights. (*Id.* at ¶ 11.)

In Count II, plaintiffs allege that Tyler was seized by the officers without a warrant or other legal right in violation of his rights under the Fourth and Fourteenth Amendments. (*Id.* at ¶ 16.)

In Count III, plaintiffs allege that the arrest and seizure of Combs and the seizure of Tyler Combs violated their constitutional rights of familial association and privacy. (*Id.* at ¶ 19.)

In Count IV, plaintiffs allege that the City of Franklin failed to adequately train its police officers. (*Id.* at ¶ 20.)

In Count V, plaintiffs allege that the officers failed in their duty to investigate prior to the arrest of Combs and the seizure of Tyler. (*Id.* at ¶ 24.)

In Count VI, plaintiffs state that defendants Bowling and Whitman, a police lieutenant and sergeant, respectively, failed to properly supervise the other officers in violation of plaintiffs' constitutional rights. (*Id.* at ¶ 29.)

In Count VII, plaintiffs state that the city prosecutor, Runge, ratified the constitutional violations committed by the other officers. (*Id.* at ¶ 29 [sic].)

In Count VIII, plaintiffs allege that the officers lacked probable cause to arrest Carpenter and used excessive and unreasonable force in effecting her arrest. (*Id.* at ¶ 35.) They further allege that she was maliciously prosecuted and denied her constitutionally protected right to a speedy trial. (*Id.* at ¶¶ 37, 43.)

Finally, plaintiffs allege that the defendant officers deprived Carpenter of her right of freedom from illegal confinement and imprisonment; her right of freedom from physical abuse, coercion, and intimidation; and her right of timely and effective assistance and medical aid, in violation of her rights under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution; 42 U.S.C. §§ 1983 and 1985; and 18 U.S.C. § 245. (*Id.* at ¶¶ 50-51.)

Plaintiffs seek injunctive and monetary relief, including compensatory damages of $2,500,00.00 and punitive damages of $4,000,000.00. (*See id.* at pp. 11-12.)

II. PLAINTIFFS' SECOND MOTION TO REMAND

Because plaintiff's second motion to remand (Doc. 14) raises a threshold issue concerning the Court's subject matter jurisdiction, the Court shall dispose of that motion first. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 587-88 (1999); *see also Midwest Motor Supply Co., Inc. v. Addis*, No. 2:05CV0733, 2006 WL 181990, at *1 (S.D. Ohio Jan. 23, 2006). For the reasons that follow, the motion is **DENIED**.

As grounds for their second motion to remand, plaintiffs argue that if the removing defendant, Troy Wolf, is dismissed as a defendant, the Court's jurisdiction would terminate. Their argument lacks merit.

It is well established that whether removal was proper is determined as of the time of the removal. *See Ahearn v. Charter Twp. of Bloomfield*, 100 F.3d 451, 453 (6th Cir. 1996); *Boyd v. Diebold, Inc.*, 97 F.R.D. 720, 721 (E.D. Mich. 1983). "Once an action has been properly removed, however, plaintiff may not do anything to defeat federal jurisdiction and force a remand to state court." *Boyd*, 97 F.R.D. at 721 (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938); *Comstock v. Morgan*, 165 F. Supp. 798 (D. Mo. 1958)).

Moreover, the subsequent dismissal of the removing defendant does not divest the court's subject matter jurisdiction where it is based, as here, on federal question. *See Robinson v. Holiday Universal, Inc.*, No. CIV.A. 05-5726, 2006 WL 470592, at *3 (E.D. Pa. Feb. 23, 2006). If the district court's jurisdiction was proper at the time of removal, plaintiffs cannot "unring the bell" by dismissing the removing defendant. *Id.*

Accordingly, the second motion to remand (Doc. 14) is **DENIED**.

III. DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

In support of their motion for judgment on the pleadings, defendants argue that claims against Officer Troy Wolf and Franklin City Prosecutor Steven Runge are barred by the applicable statute of limitations. They further argue that claims against Runge should be dismissed as redundant of claims brought against the City of Franklin. Alternatively, they seek dismissal of claims against Runge on the grounds that he is entitled to quasi-judicial immunity and, because he acts as an agent for the State of Ohio, that claims against him are barred by the Eleventh Amendment.

Although the motion for judgment on the pleadings is unopposed, the Court will address the merits of the motion. *See Hackett v. G.D. Searle & Co.*, 246 F. Supp. 2d 591, 593 (W.D. Tex. 2002) (reviewing an unopposed motion for judgment on the pleadings on the merits after noting that it was a dispositive motion). *See also*

Carver v. Bunch, 946 F.2d 451, 455 (6th Cir. 1991) (holding that "a district court cannot grant summary judgment in favor of a movant simply because the adverse party has not responded").

A. Standard of Review

The standard of review for a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) is the same as that for a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *EEOC v. J.H. Routh Packing Co.*, 246 F.3d 850, 851 (6th Cir. 2001); *Grindstaff v. Green*, 133 F.3d 416, 421 (6th Cir. 1998). When ruling on a defendant's motion to dismiss on the pleadings, a district court "must construe the complaint in the light most favorable to the plaintiff, accept all of the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claim that would entitle him to relief." *Kottmyer v. Maas*, 436 F.3d 684, 689 (6th Cir. 2006) (quoting *Ziegler v. IBP Hog Mkt., Inc.*, 249 F.3d 509, 512 (6th Cir. 2001)). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. *Id.* (citing *Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389, 405 (6th Cir. 1998)).

B. Analysis

1. Statute of Limitations

Plaintiffs bring this case pursuant to the authority of 42 U.S.C. § 1983 seeking redress for a denial of their constitutional rights. Section 1983 actions brought in Ohio are subject to the two year statute of limitations

found in Ohio Rev. Code. Ann. § 2305.10. *See Browning v. Pendleton*, 869 F.2d 989 (6th Cir. 1989).

Claims against Wolf are based on his alleged participation in the events of August 16, 2002. Thus, plaintiffs were required to bring those claims on or before August 16, 2004.

Claims against Runge are based on his role in the prosecution of criminal charges against Combs and Carpenter. The charges against Carpenter were dismissed on January 17, 2003; the proceeding against Combs was terminated on January 28, 2003. Using the later date, plaintiffs were required to present a claim against Runge no later than January 28, 2005.

Leave to file the second amended complaint naming Wolf and Runge was granted on April 22, 2005, after the statute of limitations had expired. Unless the amendment relates back to the original complaint, claims against Wolf and Runge are barred by the statute of limitations.

Under Fed. R. Civ. P. 15(c)(3)(B), an amended complaint that adds a new defendant relates back to the original complaint only if the newly-named defendant "knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against [him]." *Dye v. City of Warren*, 367 F. Supp. 2d 1175, 1183 (N.D. Ohio 2005).

The Sixth Circuit has held that new parties may not be added after the statute of limitations has run, and that such amendments do not satisfy the mistaken

identity requirement of Rule 15(c)(3)(B). *Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir.), *cert. denied*, 519 U.S. 821 (1996); *see also Reid v. City of Flint*, No. 04-73822, 2006 WL 2644993, at *3 (E.D. Mich. Sept. 14, 2006). Moreover, there is no evidence in the present case to show, nor any argument made, that either Wolf or Runge had notice that, but for a mistake concerning his identity, the original complaint would have been filed against him.

The claims against Wolf and Runge are barred by the statute of limitations.

2. Alternative Grounds For Dismissal of Runge

The alternative grounds presented for the dismissal of Runge are also well-taken.

Suing a municipal officer in his official capacity for a constitutional violation pursuant to 42 U.S.C. § 1983 is the same as suing the municipality itself. *Kraemer v. Luttrell*, 189 Fed. Appx. 361, 366 (6th Cir. 2006) (citing *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (explaining that "official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent" and that "[b]ecause the real party in interest in an official-capacity suit [against a municipal officer] is the governmental entity and not the named official, the entity's policy or custom must have played a part in the violation of federal law")); *see also Monell v. Department of Soc. Servs.*, 436 U.S. 658, 690-91 (1978).

Because Runge was named only in his official capacity, claims against him are in effect claims against the City of Franklin.

Additionally, a prosecutor acting within the scope of his duties in initiating and prosecuting a case is entitled to absolute immunity from suit for malicious prosecution. *See Imbler v. Pachtman*, 424 U.S. 409, 430 (1978); *Holloway v. Brush*, 220 F.3d 767, 774-75 (6th Cir. 2000) (*en banc*). There is no evidence to show that Runge was not acting within the scope of his official duties. Finally, to the extent Runge may act as an agent of the State of Ohio in enforcing state laws, claims against him in his official capacity are barred by the Eleventh Amendment. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989).

In sum, it appears beyond doubt that plaintiffs can prove no set of facts that would entitle them to relief as against defendants Wolf and Runge. Accordingly, the motion for judgment on the pleadings (Doc. 8) is **GRANTED**.

IV. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The remaining defendants, City of Franklin, Lt. Bowling, Sgt. Whitman, and Officer Diekman, seek summary judgment dismissing all claims against them. (Doc. 10.)

In response, plaintiffs argue that genuine issues of material fact exist which preclude entry of summary judgment, and they object to defendants' attempt to

reargue issues already decided by the state court judge.

Before reaching the merits of the motion for summary judgment, the Court must address the issue of what import should be given to the state court decision.

A. Effect Of The State Court Decision

As previously noted, while this matter was pending in the state court, Judge Bronson issued a decision granting in part and denying in part a motion for summary judgment by defendants City of Franklin, Lt. Bowling, Sgt. Whitman, and Officer Diekman. (Doc. 8-3 at 2-5.)

A decision of a state court is not binding on the federal court to which a pending action has properly been removed. *See Newhouse v. Hansen*, No. 5:06 CV 1731, 2006 WL 2583412, at *4 (N.D. Ohio Sept. 7, 2006) (citing *King v. Order of United Commercial Travelers of America*, 333 U.S. 153 (1948)); *see also Munsey v. Testworth Labs.*, 227 F.2d 902, 903 (6th Cir. 1955). A federal court need not follow the law of the case declared by a state court when a case is removed on the basis of a federal question. *Ellison v. Empire Gen. Life Ins. Co.* (*Protective Life Corp.*), No. 89-3879, 1990 WL 191630, at *3 (6th Cir. Dec. 3, 1990) (citing 1B J. Moore, J. Lucas & T. Currier, Moore's Federal Practice § 404(6) (2d ed. 1988)).

Judge Bronson's decision was not a final decision, and no judgment had been entered in the state court action. Because the state court judge still had

discretion to change his opinion until such time as he rendered a final, appealable decision, this Court also has discretion to revisit that decision. As the Sixth Circuit has explained: "The law of the case doctrine, when applied to the decisions of a coordinate court, is best described as 'a discretionary tool' that is used 'to promote judicial efficiency.'" *XL Sports, Ltd. v. Lawler*, 49 Fed. Appx. 13, 21-22 (6th Cir. 2002) (quoting *United States v. Todd*, 920 F.2d 399, 403 (6th Cir. 1990)); *but see Moses v. Business Card Exp., Inc.*, 929 F.2d 1131, 1137 (6th Cir.), *cert. denied*, 502 U.S. 821 (1991) (courts should be restrained in revisiting prior decisions).

B. Standard of Review

A motion for summary judgment should be granted if the evidence submitted to the Court demonstrates that there is no genuine issue as to any material fact and that the movant is entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party has the burden of showing the absence of genuine disputes over facts which, under the substantive law governing the issue, might affect the outcome of the action. *Celotex*, 477 U.S. at 323. All facts and inferences must be construed in a light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A party may move for summary judgment on the basis that the opposing party will not be able to produce sufficient evidence at trial to withstand a

motion for judgment as a matter of law. In response to a summary judgment motion properly supported by evidence, the nonmoving party is required to present some significant probative evidence which makes it necessary to resolve the parties' differing versions of the dispute at trial. *Harris v. Adams*, 873 F.2d 929, 931 (6th Cir. 1989); *Sixty Ivy Street Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987).

The Court is not duty bound to search the entire record in an effort to establish a lack of genuinely disputed material facts. *Guarino v. Brookfield Township Trs.*, 980 F.2d 399, 404 (6th Cir. 1992); *InterRoyal Corp. v. Sponseller*, 889 F.2d 108, 111 (6th Cir. 1989), *cert. denied sub. nom. Superior Roll Forming Co. v. Interroyal Corp*, 494 U.S. 1091 (1990). Rather, the burden is on the nonmoving party "to present affirmative evidence to defeat a properly supported motion for summary judgment," *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989), and to designate specific facts in dispute. *Anderson*, 477 U.S. at 250; *Guarino*, 980 F.2d at 404-05.

C. Analysis

1. Combs's Claims

Defendants maintain that they are entitled to judgment as a matter of law with respect to claims asserted by Combs against the officers because he cannot show a constitutional violation based on his arrest and because the officers are entitled to qualified immunity. They argue that Combs's claims against the City of Franklin fail because he cannot

demonstrate any unlawful policy or practice or a failure to train. They also maintain that Combs cannot establish a substantive due process violation based on his rights of familial association or privacy.

a. Whether Combs can establish a Fourth Amendment violation based on the warrantless entry into the home

It is well established that the warrantless entry into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment except in a few well-defined instances based on the presence of exigent circumstances. *See Payton v. New York*, 445 U.S. 573, 586 (1980); *Katz v. United States*, 389 U.S. 347, 357 (1967).

As the United States Supreme Court has held: "To be arrested in the home involves the invasion attendant to all arrests but also the invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present." *Payton v, New York, supra*, 445 U.S. at 588-89 (quoting *United States v. Reed*, 572 F. 2d 412, 423 (2d. Cir. 1978), *cert. denied, sub nom. Goldsmith v. United States*, 439 U.S. 913 (1978)) (emphasis supplied).

Accordingly, to arrest Combs in his home required the presence of a warrant, as a matter of clearly established law. Here, there exists a genuine issue of material fact in dispute as to whether or not a warrant existed.

Moreover, as to exigent circumstances, they exist only where real immediate and serious consequences would certainly occur were a police officer to postpone action to get a warrant. *O'Donnell v. Brown*, 335 F. Supp. 2d 787, 804 (W.D. Mich. 2004) (citing *United States v. Williams*, 354 F.3d 497, 503 (6th Cir. 2003); *O'Brien v. City of Grand Rapids*, 23 F.3d 990, 997 (6th Cir. 1994) (internal quotation marks and citation omitted).) There must be a "need to protect or preserve life or avoid serious injury." *O'Donnell*, 335 F. Supp. 2d at 805 (quoting *O'Brien*, 23 F.3d at 997); *see also Mincey v. Arizona*, 437 U.S. 385, 392 (1978). Furthermore, as in the present case, when authorities seek to enter a home in order to remove a child from his parent's custody, exigent circumstances do not exist where there is no evidence that the child was in immediate threat of death or severe physical harm. *See id.* (citation omitted).

The officers are not entitled to summary judgment based on their assertion that a warrant had been issued because, as found by Judge Bronson, genuine issues of material fact exist as to this claim.

Additionally, the officers are not entitled to summary judgment on the basis of exigent circumstances because there is no evidence that such circumstances existed.

Accordingly, Defendants are not entitled to summary judgment on Combs's claim for a violation of the Fourth Amendment based on the allegedly warrantless entry into his home to arrest him.

b. Whether the officers are entitled to qualified immunity

"Qualified immunity is an affirmative defense that shields government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Estate of Carter v. City of Detroit*, 408 F 3d 305, 310 (6th Cir. 2005) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

To determine whether the officers are entitled to qualified immunity, the court must determine first, "whether, considering the allegations in a light most favorable to the party injured, a constitutional right has been violated," and second "whether that right was clearly established." *Id.* The court may also consider "whether the plaintiff offered sufficient evidence to indicate that what the official[s] allegedly did was objectively unreasonable in light of the clearly established constitutional rights." *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 905 (6th Cir. 2004), *cert. denied sub. nom. Dickhaus v. Outlook Nashville, Inc.*, 544 U.S. 975 (2005).

Judge Bronson determined that defendant police officers were not entitled to judgment as a matter of law on the grounds of qualified immunity with respect to claims brought by Combs and Tyler. (*Id.* at 2-4.) He based his determination on the absence of evidence that the officers were acting pursuant to a valid warrant. He held that in the absence of a warrant or other explanation, he could not conclude that the officers acted in good faith and, construing the facts in

a light favorable to plaintiffs, that reasonable minds could not conclude that a clearly established right was not violated as a matter of law.

This Court agrees that the officers are not entitled to summary judgment upon the basis of qualified immunity given the dispute in the material facts as to whether or not the officers, without warrants, entered the home and arrested Combs and seized Tyler. That is, viewing the factual allegations in Plaintiffs' favor, as required, the warrantless entry into the home would violate a clearly established constitutional right and would be objectively unreasonable in light of the clearly established constitutional rights.

Accordingly, upon the current record, the officers are not entitled to summary judgment on the basis of qualified immunity.[1]

c. Whether Combs can establish a Fourth Amendment violation based on his arrest without a warrant

Even if the officers' entry into Combs's home may have been contrary to the Fourth Amendment, his arrest, which is analyzed separately, *see O'Donnell*, 335 F. Supp. 2d at 806, was not.

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[1] Denial of qualified immunity is only an appealable final decision when it turns on an issue of law. A defendant who is entitled to invoke a qualified immunity defense may not appeal a district court's summary judgment order in so far as that order determines whether or not the pretrial record sets forth a genuine issue of material fact for trial. *McKenna v. City of Royal Oak*, ___ F.3d ___, 2006 WL 3408190, at *2 (6th Cir. Nov. 28, 2006).

An arrest without a warrant does not violate the Fourth Amendment if probable cause exists for the arresting officer's belief that a suspect has violated or is violating the law. *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979). "Probable cause" is defined as the "facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Id.* at 37.

The officers possessed probable cause to arrest Combs for violating the court order. The undisputed evidence shows that a valid Domestic Violence Protective Order existed that not only established a visitation plan but also expressly authorized the arrest of the Respondent (Combs) for violating any of the terms of the Order. (*See* Doc. 10, Ex. A at pp. 1, 4.) It is also undisputed that on the night of his arrest, Combs's failure to deliver Tyler to the Franklin Police Department was in violation of the Protective Order.

Because probable cause existed for his arrest, Combs cannot establish a Fourth Amendment violation based solely on the arrest, and separate from the one based on the alleged warrantless entry into the home. Defendants are entitled to summary judgment in this respect.

d. Whether the arrest was made pursuant to an unlawful policy or custom

Defendants maintain that the City of Franklin is entitled to summary judgment in its favor because Combs cannot establish that his arrest was made

pursuant to an unlawful policy or custom and there is no evidence that the City acted with deliberate indifference in training its officers.

As noted by Judge Bronson, and as acknowledged by defendants, a single act can constitute an unconstitutional policy if the discretionary act was made by an official vested with final authority. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 482 (1985). (*See* Doc. 8, Ex. F (citing *Monell v. Department of Social Servs.*, 436 U.S. 658 (1978).)

However, in light of the absence of evidence that Prosecutor Runge advised Kirby to *have the police enter Combs' s home without a search warrant and arrest him without a warrant* for violating the court's protective order, Combs cannot state a claim for an unlawful act by the City pursuant to an unlawful policy or custom. That is, because Combs does not have a claim for unlawful arrest, as the officers possessed probable cause to arrest him, Combs's only claim against the City would have to be based upon the allegedly unlawful entry into the home without a warrant. However, as to such claim, plaintiffs have failed to allege or evidence that Runge advised entry into the home without a warrant to arrest Combs.

Plaintiffs have a burden to respond to defendants' motion for summary judgment with some evidence to sustain their claim, and they have not done so. Thus, Combs has no claim against the City of Franklin for the allegedly unlawful entry into the home as a matter of custom or policy, and summary judgment shall be entered accordingly.

e. Whether the act of transferring Tyler to Sarah Kirby violated Combs's constitutional rights of familial association and privacy

Defendants maintain that they are entitled to summary judgment with respect to Combs's claim that the transfer of his son to Kirby violated his rights of familial association and privacy.

It was clearly established law in 2002 (and is now) that, except in extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation procedures. *See Malik v. Arapahoe Cty. Dep't of Soc. Servs.*, 191 F.3d 1306, 1315 (10th Cir. 1999) (citing *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982)). The removal of a child from his custodial parent's home is constitutionally reasonable, however, if it is pursuant to a court order, is supported by probable cause, or is justified by exigent circumstances. *See Brokaw v. Mercer County*, 235 F.3d 1000,. 1010 (7th Cir. 2000) (emphasis supplied); *see also O'Donnell*, 335 F. Supp. 2d at 806-07.

The officers allege that they were acting pursuant to the authority of the Domestic Violence Protective Order of the state court, which expressly provided that Tyler would be in Kirby's custody between the hours of 6:00 p.m. Friday and 6:00 p.m. Sunday. (*See* Doc. 10, Ex. A.) Although the Order (properly) does not provide that the officers could enter the custodial parent's home without a warrant to effectuate the temporary change in custody, the undisputed facts show that Combs was in violation of the visitation provision and are sufficient to establish probable cause to support

the officers' seizure of Tyler and arrest of Combs. *See Brokaw*, 235 F.3d at 1010.

Accordingly, defendants are entitled to summary judgment on this claim.

2. Tyler's Claims

Defendants also seek summary judgment with respect to Tyler's claims on the grounds that he cannot establish an unlawful seizure based on his transfer by an officer from Carpenter to Sarah Kirby and because the officers are entitled to qualified immunity. They reassert that the officers' actions do not "shock the conscience" and thus do not establish a violation of Tyler's familial association or privacy rights

Defendant officers are entitled to judgment as a matter of law with respect to Tyler's claims of an unlawful seizure and a violation of his familial association and privacy rights because, as discussed above, probable cause existed to justify defendants' actions in removing him from Combs's home.[2]

The City of Franklin is also entitled to judgment as a matter of law on Tyler's claims because, as noted by Judge Bronson, Tyler has failed to come forward with any evidence of a discretionary act toward him by a vested official. *See Pembaur*, 475 U.S. at 482.

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[2] Nonetheless, to the extent that Tyler seeks to challenge the officers' warrantless entry into his (and his father's) home, defendant officers would not be entitled to judgment as a matter of law. It does not appear that such a claim is stated in the second amended complaint.

3. Carpenter's Claims

Finally, defendants maintain that they are entitled to judgment as a matter of law with respect to Carpenter's claims. First, they argue that they are entitled to qualified immunity because the officers had probable cause to arrest her for disorderly conduct and she has failed to present sufficient evidence to establish an excessive use of force claim. They also argue that she has failed to present evidence of an unlawful practice or policy to support her claims against the City of Franklin and that she has failed to present sufficient evidence to support a substantive due process claim.

a. Whether the officers had probable cause to arrest Carpenter for disorderly conduct

Defendants contend that they are entitled to qualified immunity with respect to Carpenter's claim that her arrest on a charge of disorderly conduct violated her rights under the Fourth Amendment. They are entitled to qualified immunity (and summary judgment) on this claim if they can show that they had probable cause to believe that she committed the offense. *See Hunter v. Bryant*, 502 U.S. 224, 228 (1991) (*per curiam*).

In determining whether the officers had probable cause to arrest Carpenter for disorderly conduct, the Court examines whether, "at that moment [of the arrest,] the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [arrestee] had

committed or was committing an offense." *Beck v. Ohio*, 379 U.S. 89, 91(1964).

The Ohio disorderly conduct statute provides in part as follows:

> (A) No person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following:
>
> > (1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;
> >
> > (2) Making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person;
> >
> > (3) Insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response;
> >
> > (4) Hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender;
> >
> > (5) Creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any

> act that serves no lawful and reasonable purpose of the offender.

Ohio Rev. Code Ann. § 2917.11(A).

The statute also prohibits conduct, and makes it an arrestable offense, where "[t]he offender persists . . . after reasonable warning or request to desist" or the conduct is "committed in the presence of any law enforcement officer." Ohio Rev. Code Ann. § 2917.11(E). Carpenter was charged with violating § 2917.11(E). (*See* Doc. 10, Ex. C.)

The Ohio courts have held that a person may be found to have violated the disorderly conduct statute and engaged in "turbulent behavior" by confronting sheriff's deputies loudly and hostilely, and by failing to calm down when asked to do so. *See Thacker v. Lawrence County*, 182 Fed. Appx. 464, 470 (6th Cir. 2006) (citing *State v. Jackson*, No. 17128, 1998 WL 801367, at *3 (Ohio Ct. App. Nov. 20, 1998) (unpublished).)

The undisputed evidence shows that Carpenter was upset at the prospect of the officer removing Tyler from Combs's home, that she followed the officer carrying Tyler out of the residence, that her conduct was upsetting other children in the home, that the officers asked her to calm down and that she failed to do so, and that she shouted at Kirby in a voice loud enough to be heard 30-40 feet away. (*See* Doc. 10, Ex. C. at ¶¶ 11-14; Doc. 11, "Deposition of LaDawnya K. Carpenter" (hereinafter ("Dep."), at pp. 127, 13132, 147-48.)

Even accepting Carpenter's version of disputed facts, *e.g.*, she was not cursing and, while upset and crying, was not angry (*see* Dep. at pp. 148-49), a prudent officer could have believed that Carpenter was violating the statute based on her opposition to giving Tyler over to Kirby, the volume and delivery of her speech (not simply its content), and her persistent failure to calm down despite the officers' requests. *See Thacker*, 182 Fed. Appx. at 470 (citing *Beck*, 379 U.S. at 9; *Jackson*, 1998 WL 801367, at *3).

Carpenter has the burden of proving the absence of probable cause. *See St. John v. Hickey*, 411 F.3d 762, 769 (6th Cir. 2005). She has not presented sufficient evidence to create a genuine issue of fact as to the existence of probable cause. Thus, defendants are entitled to summary judgment on Carpenter's claim of an unlawful arrest.

b. Whether defendants are entitled to summary judgment on Carpenter's claim of an excessive use of force

Defendants also argue that Carpenter has failed to present sufficient evidence to establish a claim based on an excessive use of force. They seek leave to supplement their motion for summary judgment with an opinion letter by a law enforcement expert. (Doc. 25.)

The Sixth Circuit has determined that rulings on the admissibility of expert opinion evidence are within the discretion of the trial court. *See Brainard v. American Skandia Life Assur. Corp.*, 432 F.3d 655, 663 (6th Cir. 2005). "An expert opinion submitted in the

context of a summary judgment motion 'must be more that a conclusory assertion about ultimate legal issues.'" *Id.* (citation omitted). The opinion "must 'set forth facts' and, in so doing, outline a line of reasoning arising from a logical foundation." *Id.* (citations omitted).

The expert opinion in the present case states, *inter alia*, that a bruise sustained by Carpenter "might be consistent with an escort by an officer of a resistant suspect" and that the use of force by defendant officers Bowling, Whitman and Diekman was "proper" and "within the parameters of the Franklin (OH) Police Department's use of force policy" and the "nationally accepted guidelines of the law enforcement industry regarding use of force." (Doc. 25, Ex. A-2 at pp. 5-7.)

An excessive force claim is analyzed under the Fourth Amendment's "objective reasonableness" standard. *See Graham v. Connor*, 490 U.S. 386, 395 (1989). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.*

The Court finds that the expert opinion submitted by defendants fails to meet the requirement for a factual basis and that the finding of a "proper" use of force is a conclusory assertion about an ultimate legal issue.

Accordingly, the motion for leave to supplement the motion for summary judgment (Doc. 25) is **DENIED**. The Court does not determine in this Order the issue of the admissibility of the expert's opinion at trial.

The Court finds further that disputed issues of material fact exist concerning Carpenter's conduct and the need for any use of force.

Whether the amount of force used in a particular case was reasonable "requires careful attention to the facts and circumstances . . ., including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [she] is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396; *see also St. John*, 411 F.3d at 771. These factors are not exhaustive; rather the ultimate question is "whether the totality of the circumstances justifies a particular sort of seizure." *Graham*, 490 U.S. at 396.

The crime of disorderly conduct is not a heinously serious crime. *See Thacker*, 182 Fed. Appx. at 472. The parties dispute whether Carpenter posed a threat to the safety of the officers or others, whether or when she was told that she was under arrest, and whether she resisted the officers' attempt to restrain her or to handcuff her.

In light of disputed issues of material fact, summary judgment is not appropriate on Carpenter's excessive force claim.

c. *Whether Carpenter presented sufficient evidence of an unlawful practice or policy to prevail on her claims against the City of Franklin*

In Count VII of the second amended complaint, Carpenter alleges that she was falsely arrested,

maliciously prosecuted, and denied a speedy trial by the City of Franklin.

Municipal liability attaches only where a plaintiff's injury is the result of an official custom or policy of the city. *Pembaur*, 475 U.S. 479. "To show the existence of an offending custom or policy, plaintiffs must adduce specific facts supporting their claim; conclusory allegations are insufficient." *Games Galore of Ohio, Inc. v. Masminster*, 154 F. Supp. 2d 1292, 1300 (S.D. Ohio 2001) (citing *Taylor v. Canton, Ohio Police Dep't*, 544 F. Supp. 783 (N.D. Ohio 1982)). A single act can constitute an unconstitutional policy if the discretionary act was made by an official vested with final authority. *Pembaur*, 475 U.S. at 482.

Here, as evidence of an unlawful policy, plaintiffs contend that the City Prosecutor, Runge, "ratified" the actions of the City. They argue further that criminal charges were filed against an eyewitness to these events, Mary Zolecki, to intimidate her and keep her from testifying at Carpenter's trial.

However, each of Carpenter's underlying claims – (1) that she was falsely arrested; (2) that she was maliciously prosecuted; and (3) that she was denied a speedy trial – fail on the evidenced facts as a matter of law.

(1) Carpenter was not falsely arrested as the Court has found upon the facts and law that the officers possessed probable cause to arrest her.

(2) Carpenter likewise cannot prove malicious prosecution, because lack of probable cause is an

element and the gist of the civil tort for malicious criminal prosecution, *see Trussell v. General Motors Corp.* (1990), 53 Ohio St. 3d 142, and here the officers possessed probable cause to prosecute upon the facts as a matter of law.

(3) As to Carpenter's claim that she was denied a speedy trial, a defendant's right to a speedy trial under the Sixth and Fourteenth Amendments is not self-executing – she must request or demand a speedy trial to invoke the constitutional protection *See State v. Butler*, 19 Ohio St. 2d 55, 56-57, 249 N.E.2d 818, 819 (Ohio 1969). Here, Carpenter has failed to establish that she took the necessary action to invoke the protection as the record before this Court reflects only that the state court dismissed the case. In any event, Carpenter's claim fails because she has not provided evidence of any custom or policy resulting in the delay in bringing her to trial. *See Monell*, 436 U.S. at 684; *see also Smith v. Shelby Cty.*, 3 Fed. Appx. 436, 438 (6th Cir. 2001).

Defendants being entitled to judgment as matter of law on these claims upon the undisputed material facts, summary judgment shall be entered accordingly.

d. Whether Carpenter presented sufficient evidence to prevail on a claim of a substantive due process violation

Next, defendants assert that they are entitled to judgment as a matter of law because Carpenter has failed to present sufficient evidence to support a substantive due process claim. Plaintiffs did not respond to this argument and have failed to establish

a genuine issue of material fact. Accordingly, Defendants are entitled to summary judgment on Carpenter's due process claim.

e. Whether plaintiffs have presented sufficient evidence to prevail on claims for failure to investigate, train and supervise the Officers (Counts IV-VI).

Defendants assert finally that they are entitled to judgment as a matter of law because plaintiffs have failed to present sufficient evidence to support their claims of failure to investigate, train and supervise. Plaintiffs did not support these claims by argument or evidence, and they have failed to establish a genuine issue of material fact. Accordingly, summary judgment shall be entered against plaintiffs on Counts IV, V, and VI.

4. Claims Under 42 U.S.C. § 1985 and 18 U.S.C. § 245, and Claims for Injunctive Relief

The second amended complaint also included claims for relief under 42 U.S.C. § 1985 and 18 U.S.C. § 245, as well as claims for injunctive relief. (*See* Doc. 1 at p. 11, ¶ 51.)

While this action was pending in state court, Judge Bronson granted summary judgment for defendants on plaintiffs' claims under 18 U.S.C. § 245 and 42 U.S.C. § 1985 and on plaintiffs' claims for injunctive relief. Plaintiffs do not now dispute this ruling, and Defendants are entitled to summary judgment on these claims.

V. CONCLUSION

For the reasons stated above, **IT IS HEREIN ORDERED THAT:**

1. Plaintiffs' second motion to remand (Doc. 14) is **DENIED**;

2. Defendants' motion for judgment on the pleadings (Doc. 8) is **GRANTED**; claims against defendants Troy Wolf and Steven M. Runge are **DISMISSED** with prejudice; and defendants Troy Wolf and Steven M. Runge are **DISMISSED** as parties to this case;

3. Defendants' motion for leave to supplement their motion for summary judgment with an expert opinion report (Doc. 25) is **DENIED**; and

4. Defendants' motion for summary judgment (Doc. 10) is **GRANTED IN PART** and **DENIED IN PART** as follows:

    a. Summary judgment is **GRANTED** in favor of defendants with respect to the following claims:

        - Combs's claim that he was arrested without probable cause;

        - Combs's and Tyler's claims based on an unlawful seizure and a violation of familial association and privacy rights;

        - Tyler's claims against the City of Franklin;

- Carpenter's claim that she was arrested without probable cause;
- Carpenter's claim that she was maliciously prosecuted;
- Carpenter's claim that she was denied a speedy trial;
- Carpenter's due process claim;
- Combs's and Carpenter's claims against the City of Franklin;
- claims under 18 U.S.C. § 245;
- claims under 42 U.S.C. § 1985; and
- claims for injunctive relief.

b. Summary judgment is **DENIED** with respect to the following:

- Plaintiffs' claims based on a warrantless entry into Combs's home;

and

- Carpenter's excessive force claim.

Accordingly, this case shall commence to trial only with respect to these two causes of action against defendants Bowling, Whitman and Diekman.

IT IS SO ORDERED.

Date: 12/22/06

s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[Filed July 17, 2008]

No. 07-3100

LADAWNYA K. CARPENTER, ET AL.,	)
	)
Plaintiffs-Appellees,	)
	)
v.	)
	)
LESLIE WAYNE BOWLING, ET AL.,	)
	)
Defendants-Appellants.	)
	)

ORDER

BEFORE: BATCHELDER and SUTTON, Circuit Judges; and BARZILAY,* Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other

* Hon. Judith M. Barzilay, Judge of the United States Court of International Trade, sitting by designation.

active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/
Leonard Green
Clerk

APPENDIX E

Baldwin's Ohio Revised Code Annotated
Title XXXI. Domestic Relations--Children
Chapter 3113. Neglect, Abandonment, or Domestic Violence (refs & Annos)
Domestic Violence

R.C. § 3113.31 Petitions; protection orders concerning domestic violence or sexually oriented offense; support orders; sanctions for violations; notification of law enforcement agencies and courts

(A) As used in this section:

(1) "Domestic violence" means the occurrence of one or more of the following acts against a family or household member:

(a) Attempting to cause or recklessly causing bodily injury;

(b) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 or 2911.211 of the Revised Code;

(c) Committing any act with respect to a child that would result in the child being an abused child, as defined in section 2151.031 of the Revised Code;

(d) Committing a sexually oriented offense.

(2) "Court" means the domestic relations division of the court of common pleas in counties that have a domestic relations division, and the court of common pleas in counties that do not have a domestic relations division.

(3) "Family or household member" means any of the following:

(a) Any of the following who is residing with or has resided with the respondent:

(i) A spouse, a person living as a spouse, or a former spouse of the respondent;

(ii) A parent or a child of the respondent, or another person related by consanguinity or affinity to the respondent;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the respondent, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the respondent.

(b) The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent.

(4) "Person living as a spouse" means a person who is living or has lived with the respondent in a common law marital relationship, who otherwise is cohabiting with the respondent, or who otherwise has cohabited

with the respondent within five years prior to the date of the alleged occurrence of the act in question.

(5) "Victim advocate" means a person who provides support and assistance for a person who files a petition under this section.

(6) "Sexually oriented offense" has the same meaning as in section 2950. 01 of the Revised Code.

(B) The court has jurisdiction over all proceedings under this section. The petitioner's right to relief under this section is not affected by the petitioner's leaving the residence or household to avoid further domestic violence.

(C) A person may seek relief under this section on the person's own behalf, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain or state:

(1) An allegation that the respondent engaged in domestic violence against a family or household member of the respondent, including a description of the nature and extent of the domestic violence;

(2) The relationship of the respondent to the petitioner, and to the victim if other than the petitioner;

(3) A request for relief under this section.

(D)(1) If a person who files a petition pursuant to this section requests an ex parte order, the court shall hold

an ex parte hearing on the same day that the petition is filed. The court, for good cause shown at the ex parte hearing, may enter any temporary orders, with or without bond, including, but not limited to, an order described in division (E)(1)(a), (b), or (c) of this section, that the court finds necessary to protect the family or household member from domestic violence. Immediate and present danger of domestic violence to the family or household member constitutes good cause for purposes of this section. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the family or household member with bodily harm, in which the respondent has threatened the family or household member with a sexually oriented offense, or in which the respondent previously has been convicted of or pleaded guilty to an offense that constitutes domestic violence against the family or household member.

(2)(a) If the court, after an ex parte hearing, issues an order described in division (E)(1)(b) or (c) of this section, the court shall schedule a full hearing for a date that is within seven court days after the ex parte hearing. If any other type of protection order that is authorized under division (E) of this section is issued by the court after an ex parte hearing, the court shall schedule a full hearing for a date that is within ten court days after the ex parte hearing. The court shall give the respondent notice of, and an opportunity to be heard at, the full hearing. The court shall hold the full hearing on the date scheduled under this division unless the court grants a continuance of the hearing in accordance with this division. Under any of the following circumstances or for any of the following

reasons, the court may grant a continuance of the full hearing to a reasonable time determined by the court:

(i) Prior to the date scheduled for the full hearing under this division, the respondent has not been served with the petition filed pursuant to this section and notice of the full hearing.

(ii) The parties consent to the continuance.

(iii) The continuance is needed to allow a party to obtain counsel.

(iv) The continuance is needed for other good cause.

(b) An ex parte order issued under this section does not expire because of a failure to serve notice of the full hearing upon the respondent before the date set for the full hearing under division (D)(2)(a) of this section or because the court grants a continuance under that division.

(3) If a person who files a petition pursuant to this section does not request an ex parte order, or if a person requests an ex parte order but the court does not issue an ex parte order after an ex parte hearing, the court shall proceed as in a normal civil action and grant a full hearing on the matter.

(E)(1) After an ex parte or full hearing, the court may grant any protection order, with or without bond, or approve any consent agreement to bring about a cessation of domestic violence against the family or household members. The order or agreement may:

(a) Direct the respondent to refrain from abusing or from committing sexually oriented offenses against the family or household members;

(b) Grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by evicting the respondent, when the residence or household is owned or leased solely by the petitioner or other family or household member, or by ordering the respondent to vacate the premises, when the residence or household is jointly owned or leased by the respondent, and the petitioner or other family or household member;

(c) When the respondent has a duty to support the petitioner or other family or household member living in the residence or household and the respondent is the sole owner or lessee of the residence or household, grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by ordering the respondent to vacate the premises, or, in the case of a consent agreement, allow the respondent to provide suitable, alternative housing;

(d) Temporarily allocate parental rights and responsibilities for the care of, or establish temporary parenting time rights with regard to, minor children, if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or parenting time rights;

(e) Require the respondent to maintain support, if the respondent customarily provides for or contributes to the support of the family or household member, or if

the respondent has a duty to support the petitioner or family or household member;

(f) Require the respondent, petitioner, victim of domestic violence, or any combination of those persons, to seek counseling;

(g) Require the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member;

(h) Grant other relief that the court considers equitable and fair, including, but not limited to, ordering the respondent to permit the use of a motor vehicle by the petitioner or other family or household member and the apportionment of household and family personal property.

(2) If a protection order has been issued pursuant to this section in a prior action involving the respondent and the petitioner or one or more of the family or household members or victims, the court may include in a protection order that it issues a prohibition against the respondent returning to the residence or household. If it includes a prohibition against the respondent returning to the residence or household in the order, it also shall include in the order provisions of the type described in division (E)(7) of this section. This division does not preclude the court from including in a protection order or consent agreement, in circumstances other than those described in this division, a requirement that the respondent be evicted from or vacate the residence or household or refrain from entering the residence, school, business, or place of employment of the petitioner or a family or

household member, and, if the court includes any requirement of that type in an order or agreement, the court also shall include in the order provisions of the type described in division (E)(7) of this section.

(3)(a) Any protection order issued or consent agreement approved under this section shall be valid until a date certain, but not later than five years from the date of its issuance or approval unless modified or terminated as provided in division (E)(8) of this section.

(b) Subject to the limitation on the duration of an order or agreement set forth in division (E)(3)(a) of this section, any order under division (E)(1)(d) of this section shall terminate on the date that a court in an action for divorce, dissolution of marriage, or legal separation brought by the petitioner or respondent issues an order allocating parental rights and responsibilities for the care of children or on the date that a juvenile court in an action brought by the petitioner or respondent issues an order awarding legal custody of minor children. Subject to the limitation on the duration of an order or agreement set forth in division (E)(3)(a) of this section, any order under division (E)(1)(e) of this section shall terminate on the date that a court in an action for divorce, dissolution of marriage, or legal separation brought by the petitioner or respondent issues a support order or on the date that a juvenile court in an action brought by the petitioner or respondent issues a support order.

(c) Any protection order issued or consent agreement approved pursuant to this section may be renewed in

the same manner as the original order or agreement was issued or approved.

(4) A court may not issue a protection order that requires a petitioner to do or to refrain from doing an act that the court may require a respondent to do or to refrain from doing under division (E)(1)(a), (b), (c), (d), (e), (g), or (h) of this section unless all of the following apply:

(a) The respondent files a separate petition for a protection order in accordance with this section.

(b) The petitioner is served notice of the respondent's petition at least forty-eight hours before the court holds a hearing with respect to the respondent's petition, or the petitioner waives the right to receive this notice.

(c) If the petitioner has requested an ex parte order pursuant to division (D) of this section, the court does not delay any hearing required by that division beyond the time specified in that division in order to consolidate the hearing with a hearing on the petition filed by the respondent.

(d) After a full hearing at which the respondent presents evidence in support of the request for a protection order and the petitioner is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed an act of domestic violence or has violated a temporary protection order issued pursuant to section 2919.26 of the Revised Code, that both the petitioner and the respondent acted primarily as aggressors, and that

neither the petitioner nor the respondent acted primarily in self-defense.

(5) No protection order issued or consent agreement approved under this section shall in any manner affect title to any real property.

(6)(a) If a petitioner, or the child of a petitioner, who obtains a protection order or consent agreement pursuant to division (E)(1) of this section or a temporary protection order pursuant to section 2919.26 of the Revised Code and is the subject of a parenting time order issued pursuant to section 3109.051 or 3109.12 of the Revised Code or a visitation or companionship order issued pursuant to section 3109.051, 3109.11, or 3109.12 of the Revised Code or division (E)(1)(d) of this section granting parenting time rights to the respondent, the court may require the public children services agency of the county in which the court is located to provide supervision of the respondent's exercise of parenting time or visitation or companionship rights with respect to the child for a period not to exceed nine months, if the court makes the following findings of fact:

(i) The child is in danger from the respondent;

(ii) No other person or agency is available to provide the supervision.

(b) A court that requires an agency to provide supervision pursuant to division (E)(6)(a) of this section shall order the respondent to reimburse the agency for the cost of providing the supervision, if it

determines that the respondent has sufficient income or resources to pay that cost.

(7)(a) If a protection order issued or consent agreement approved under this section includes a requirement that the respondent be evicted from or vacate the residence or household or refrain from entering the residence, school, business, or place of employment of the petitioner or a family or household member, the order or agreement shall state clearly that the order or agreement cannot be waived or nullified by an invitation to the respondent from the petitioner or other family or household member to enter the residence, school, business, or place of employment or by the respondent's entry into one of those places otherwise upon the consent of the petitioner or other family or household member.

(b) Division (E)(7)(a) of this section does not limit any discretion of a court to determine that a respondent charged with a violation of section 2919.27 of the Revised Code, with a violation of a municipal ordinance substantially equivalent to that section, or with contempt of court, which charge is based on an alleged violation of a protection order issued or consent agreement approved under this section, did not commit the violation or was not in contempt of court.

(8)(a) The court may modify or terminate as provided in division (E)(8) of this section a protection order or consent agreement that was issued after a full hearing under this section. The court that issued the protection order or approved the consent agreement shall hear a motion for modification or termination of the

protection order or consent agreement pursuant to division (E)(8) of this section.

(b) Either the petitioner or the respondent of the original protection order or consent agreement may bring a motion for modification or termination of a protection order or consent agreement that was issued or approved after a full hearing. The court shall require notice of the motion to be made as provided by the Rules of Civil Procedure. If the petitioner for the original protection order or consent agreement has requested that the petitioner's address be kept confidential, the court shall not disclose the address to the respondent of the original protection order or consent agreement or any other person, except as otherwise required by law. The moving party has the burden of proof to show, by a preponderance of the evidence, that modification or termination of the protection order or consent agreement is appropriate because either the protection order or consent agreement is no longer needed or because the terms of the original protection order or consent agreement are no longer appropriate.

(c) In considering whether to modify or terminate a protection order or consent agreement issued or approved under this section, the court shall consider all relevant factors, including, but not limited to, the following:

(i) Whether the petitioner consents to modification or termination of the protection order or consent agreement;

(ii) Whether the petitioner fears the respondent;

(iii) The current nature of the relationship between the petitioner and the respondent;

(iv) The circumstances of the petitioner and respondent, including the relative proximity of the petitioner's and respondent's workplaces and residences and whether the petitioner and respondent have minor children together;

(v) Whether the respondent has complied with the terms and conditions of the original protection order or consent agreement;

(vi) Whether the respondent has a continuing involvement with illegal drugs or alcohol;

(vii) Whether the respondent has been convicted of or pleaded guilty to an offense of violence since the issuance of the protection order or approval of the consent agreement;

(viii) Whether any other protection orders, consent agreements, restraining orders, or no contact orders have been issued against the respondent pursuant to this section, section 2919.26 of the Revised Code, any other provision of state law, or the law of any other state;

(ix) Whether the respondent has participated in any domestic violence treatment, intervention program, or other counseling addressing domestic violence and whether the respondent has completed the treatment, program, or counseling;

(x) The time that has elapsed since the protection order was issued or since the consent agreement was approved;

(xi) The age and health of the respondent;

(xii) When the last incident of abuse, threat of harm, or commission of a sexually oriented offense occurred or other relevant information concerning the safety and protection of the petitioner or other protected parties.

(d) If a protection order or consent agreement is modified or terminated as provided in division (E)(8) of this section, the court shall issue copies of the modified or terminated order or agreement as provided in division (F) of this section. A petitioner may also provide notice of the modification or termination to the judicial and law enforcement officials in any county other than the county in which the order or agreement is modified or terminated as provided in division (N) of this section.

(e) If the respondent moves for modification or termination of a protection order or consent agreement pursuant to this section, the court may assess costs against the respondent for the filing of the motion.

(F)(1) A copy of any protection order, or consent agreement, that is issued, approved, modified, or terminated under this section shall be issued by the court to the petitioner, to the respondent, and to all law enforcement agencies that have jurisdiction to enforce the order or agreement. The court shall direct

that a copy of an order be delivered to the respondent on the same day that the order is entered.

(2) Upon the issuance of a protection order or the approval of a consent agreement under this section, the court shall provide the parties to the order or agreement with the following notice orally or by form:

"NOTICE

As a result of this order or consent agreement, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8). If you have any questions whether this law makes it illegal for you to possess or purchase a firearm or ammunition, you should consult an attorney."

(3) All law enforcement agencies shall establish and maintain an index for the protection orders and the approved consent agreements delivered to the agencies pursuant to division (F)(1) of this section. With respect to each order and consent agreement delivered, each agency shall note on the index the date and time that it received the order or consent agreement.

(4) Regardless of whether the petitioner has registered the order or agreement in the county in which the officer's agency has jurisdiction pursuant to division (N) of this section, any officer of a law enforcement agency shall enforce a protection order issued or consent agreement approved by any court in this state in accordance with the provisions of the order or agreement, including removing the respondent from the premises, if appropriate.

(G) Any proceeding under this section shall be conducted in accordance with the Rules of Civil Procedure, except that an order under this section may be obtained with or without bond. An order issued under this section, other than an ex parte order, that grants a protection order or approves a consent agreement, that refuses to grant a protection order or approve a consent agreement that modifies or terminates a protection order or consent agreement, or that refuses to modify or terminate a protection order or consent agreement, is a final, appealable order. The remedies and procedures provided in this section are in addition to, and not in lieu of, any other available civil or criminal remedies.

(H) The filing of proceedings under this section does not excuse a person from filing any report or giving any notice required by section 2151.421 of the Revised Code or by any other law. When a petition under this section alleges domestic violence against minor children, the court shall report the fact, or cause reports to be made, to a county, township, or municipal peace officer under section 2151.421 of the Revised Code.

(I) Any law enforcement agency that investigates a domestic dispute shall provide information to the family or household members involved regarding the relief available under this section and section 2919.26 of the Revised Code.

(J) Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or a court of another state, no court

or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a petition pursuant to this section or in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement.

(K)(1) The court shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code when it makes or modifies an order for child support under this section.

(2) If any person required to pay child support under an order made under this section on or after April 15, 1985, or modified under this section on or after December 31, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(L)(1) A person who violates a protection order issued or a consent agreement approved under this section is subject to the following sanctions:

(a) Criminal prosecution for a violation of section 2919.27 of the Revised Code, if the violation of the protection order or consent agreement constitutes a violation of that section;

(b) Punishment for contempt of court.

(2) The punishment of a person for contempt of court for violation of a protection order issued or a consent agreement approved under this section does not bar criminal prosecution of the person for a violation of section 2919.27 of the Revised Code. However, a person punished for contempt of court is entitled to credit for the punishment imposed upon conviction of a violation of that section, and a person convicted of a violation of that section shall not subsequently be punished for contempt of court arising out of the same activity.

(M) In all stages of a proceeding under this section, a petitioner may be accompanied by a victim advocate.

(N)(1) A petitioner who obtains a protection order or consent agreement under this section or a temporary protection order under section 2919.26 of the Revised Code may provide notice of the issuance or approval of the order or agreement to the judicial and law enforcement officials in any county other than the county in which the order is issued or the agreement is approved by registering that order or agreement in the other county pursuant to division (N)(2) of this section and filing a copy of the registered order or registered agreement with a law enforcement agency in the other county in accordance with that division. A person who obtains a protection order issued by a court of another state may provide notice of the issuance of the order to the judicial and law enforcement officials in any county of this state by registering the order in that county pursuant to section 2919.272 of the Revised Code and filing a copy of the registered order with a law enforcement agency in that county.

(2) A petitioner may register a temporary protection order, protection order, or consent agreement in a county other than the county in which the court that issued the order or approved the agreement is located in the following manner:

(a) The petitioner shall obtain a certified copy of the order or agreement from the clerk of the court that issued the order or approved the agreement and present that certified copy to the clerk of the court of common pleas or the clerk of a municipal court or county court in the county in which the order or agreement is to be registered.

(b) Upon accepting the certified copy of the order or agreement for registration, the clerk of the court of common pleas, municipal court, or county court shall place an endorsement of registration on the order or agreement and give the petitioner a copy of the order or agreement that bears that proof of registration.

(3) The clerk of each court of common pleas, the clerk of each municipal court, and the clerk of each county court shall maintain a registry of certified copies of temporary protection orders, protection orders, or consent agreements that have been issued or approved by courts in other counties and that have been registered with the clerk.

Supreme Court, U.S.
FILED

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(2)

08-566 OCT 15 2008

No. OFFICE OF THE CLERK

In the Supreme Court of the United States

LESLIE WAYNE BOWLING, Lt., RUSSELL WHITMAN, Sgt., EDWARD DIEKMAN, Officer,
Petitioners,

v.

LADAWNYA K. CARPENTER, CHARLES N. COMBS,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

VOLUME 2 OF APPENDIX TO PETITION FOR WRIT OF CERTIORARI

LYNNETTE BALLATO DINKLER
Counsel of Record
SUBASHI, WILDERMUTH & DINKLER
50 CHESTNUT STREET, SUITE 230
THE GREENE TOWN CENTER
DAYTON, OH 45440
PHONE: (937) 427-8800

Counsel for Petitioners

October 15, 2008

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

IN THE
SUPREME COURT OF THE UNITED STATES

LESLIE WAYNE BOWLING, Lt.,
RUSSELL WHITMAN, Sgt.,
EDWARD DIEKMAN, Officer,

Petitioners,

v.

LADAWNYA K. CARPENTER,
CHARLES N. COMBS,

Respondents.

PETITIONERS' APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX F

IN THE COMMON PLEAS COURT
WARREN COUNTY, OHIO

No. 02 DV 1302

[Filed July 26, 2002]

PETITIONER:	)
Sarah Kirby	)
	)
v.	)
	)
RESPONDENT:	)
Charles Combs	)
	)

WARNING CONCERNING THE ATTACHED DOMESTIC VIOLENCE PROTECTION ORDER

NOTE: *Rules of Superintendence 10.01 and 10.02 require this Warning to be attached to the FRONT of all civil and criminal domestic violence protection orders issued by the courts of the State of Ohio.*

WARNING TO RESPONDENT/DEFENDANT

Violating the attached Protection Order is a crime, punishable by imprisonment or fine or both, and can

cause your bond to be revoked or result in a contempt of court citation against you.

This Protection Order is enforceable in all 50 states, the District of Columbia, tribal lands, and U.S. Territories pursuant to the Violence Against Women Act, 18 U.S.C. Section 2265. Violating this Protection Order may subject you to federal charges and punishment. You may also be subject to federal penalty for possessing, transporting, or accepting a firearm under the Gun Control Act, 18 U.S.C. Section 922(g)(8).

Only the Court can change this order. The Petitioner/Alleged Victim cannot give you legal permission to change this order. If you go near the Petitioner/Alleged Victim, even with the Petitioner's/Alleged Victim's consent, you may be arrested. If you and the Petitioner/Alleged Victim want to resume your relationship you must ask the Court to modify or dismiss this Protection Order. Unless the Court modifies/dismisses this order, you can be arrested for violating this Protection Order. You act at your own risk if you disregard this WARNING.

WARNING TO PETITIONER/ ALLEGED VICTIM

You **cannot** change the terms of this order by your words or actions. Only the Court can allow the Respondent/Defendant to contact you or return to your residence. If you and the Respondent/Defendant want to resume your relationship, you **must** ask the Court to modify or dismiss this Protection Order.

NOTICE TO ALL LAW ENFORCEMENT AGENCIES AND OFFICERS

The attached Protection Order is enforceable in all jurisdictions. Violation of this Protection Order, regardless of whether it is a criminal or civil Protection Order, is a crime under R.C. 2919.27. Law enforcement officers with powers to arrest under R.C. 2935.03 for violations of the Ohio Revised Code must enforce the terms of this Protection Order as required by R.C. 2919.26, 2919.27 and R.C. 3113.31. If you have reasonable grounds to believe that Respondent/ Defendant has violated this Protection Order, it is the preferred course of action in Ohio under R.C. 2035.03 to arrest and detain Respondent/Defendant until a warrant can be obtained. Federal Law prohibits charging a fee to the victim for service of this order.

FORM 10.01-G WARNING CONCERNING ATTACHED DOMESTIC VIOLENCE PROTECTION ORDER

Revised 6/1/02
Discard all previous versions of this form

IN THE COMMON PLEAS COURT
WARREN COUNTY, OHIO

[Filed July 26, 2002]

ORDER OF PROTECTION
Per ORC 3113.31(F)(2), this order is indexed at

WARREN COUNTY SHERIFF
LAW ENFORCEMENT AGENCY WHERE INDEXED

(513) 695-1280
PHONE NUMBER

Case No. 02 DV 1302
Judge/Magistrate Flannery/Iversen
County WARREN State OHIO

CONSENT AGREEMENT AND DOMESTIC VIOLENCE CIVIL PROTECTION ORDER (R.C. 3113.31)
* * *
375-801 DIS

PETITIONER:

Sarah		Kirby
First	Middle	Last

v.

RESPONDENT:

Charles		Combs
First	Middle	Last

Relationship to Petitioner: Parent of child
Address where Respondent can be found:
30 Beam Dr. # D
Franklin, OH 45005

* * *

PERSON(S) PROTECTED BY THIS ORDER:

Petitioner: Sarah Kirby DOB: [REDACTED]/82

* * *

RESPONDENT IDENTIFIERS

SEX	RACE	HT	WT
M	C	5'7"	270

EYES	HAIR	DATE OF BIRTH
Blue	Blond	[REDACTED]-74

DRIVERS LIC NO. & EXP. DATE	STATE
	Ohio

* * *

(Violence Against Women Act, 18 U.S.C. 2265,
Federal Full Faith & Credit Declaration:
Registration of this form is not
required for enforcement.)

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent will be provided with

reasonable notice and opportunity to be heard within the time required by Ohio law. Additional findings of this order are set forth below.

THIS COURT HEREBY ORDERS:

That the above named Respondent be restricted from committing further acts of abuse or threats of abuse.

That the above named Respondent be restrained from any contact with Petitioner and other protected persons named in this order, as set forth below.

Additional terms of this order are set forth below:

The term of this order shall be effective until 7/01/07.
DATE CERTAIN - MAXIMUM FIVE YEARS

WARNINGS TO RESPONDENT: See the warnings page attached to the front of this Order.

Form 10.01-I CONSENT AGREEMENT AND DOMESTIC VIOLENCE CIVIL PROTECTION ORDER

Revised 6/1/02
Discard all previous versions of this form

(page 2 of Form 10.01-G)

This proceeding came on for a hearing on July 8, 2002 before the Court on the undersigned Magistrate pursuant to Civil Rule 53 and the ~~*Ex Parte* Order filed _____, _____~~. The following individuals were presented: petitioner with Ms. Persyk from ACRS and respondent. The parties agree to waive their notice and hearing rights and their rights under Civil Rule 53, including the right to request findings of fact and conclusion of law and to file objections to the Magistrate's Decision in this matter.

ALL OF THE PROVISIONS CHECKED BELOW APPLY TO THE RESPONDENT

X 1. RESPONDENT SHALL NOT ABUSE the protected persons named in the Order by harming, attempting to harm, threatening, molesting, following, stalking, bothering, harassing, annoying, contacting, or forcing sexual relations on them. [NCIC 01 and 02]

* * *

X 5. RESPONDENT SHALL NOT ENTER the residence, school, business, place of employment, or day care centers of the protected persons named in this order, including the buildings, grounds and parking lots at those locations.

X 6. RESPONDENT SHALL STAY AWAY FROM PETITIONER and all other protected persons named in this order, and shall not

be present within XXX yards or 100 yards (distance) of protected persons, wherever protected persons may be found, or any place the Respondent knows or should know the protected persons are likely to be, even with Petitioner's permission. If Respondent accidently comes in contact with protected persons in any public or private place, Respondent must depart *immediately*. This order includes, encounters on public and private roads, highways, and thoroughfares. [NCIC 04]

X 7. RESPONDENT SHALL NOT INITIATE ANY CONTACT with the protected persons named in this Order or their residences, businesses, places of employment, schools, day care centers, and babysitters. Contact includes, but is not limited to, telephone, fax, e-mail, voice mail, delivery service, writing, or communications by any other means in person or through another person [NCIC 05]

* * *

X 10. RESPONDENT SHALL NOT CAUSE OR ENCOURAGE ANY PERSON to do any act prohibited by this order.

X 11. RESPONDENT SHALL NOT POSSESS, USE, CARRY, OR OBTAIN ANY DEADLY WEAPON. Respondent shall turn over all deadly weapons in Respondent's possession to the law enforcement officer who serves

Respondent with this Order as follows: ___

Any law enforcement agency is authorized to take possession of deadly weapons pursuant to this paragraph and hold them in protective custody until further Court order. [NCIC 07]

X 12. PARENTAL RIGHTS AND RESPONSIBILITIES ARE TEMPORARILY ALLOCATED AS FOLLOWS: Child to be with Mr. Combs from Sunday at 6:00 pm - Friday at 6:00 pm. Child to be with Ms. Kirby from Fri at 6:00 pm - Sunday at 6:00 pm.

This order applies to the following child(ren): Tyler Combs (dob [REDACTED]-01)

X 13. VISITATION ORDERS DO NOT PERMIT RESPONDENT TO VIOLATE THE TERMS OF THIS ORDER.

* * *

X (B) As a limited exception to paragraph 6, temporary visitation rights are established as follows: See # 12

* * *

X 18. IT IS FURTHER ORDERED that: All exchanges to take place at Franklin

police department.

Respondent to provide a copy of Tyler's Social Security Card to petitioner at exchange of child on Friday July 26, 2002 at 6:00 PM.

* * *

20. IT IS FURTHER ORDERED that Respondent shall pay the remaining court costs in this action.

21. IT IS FURTHER ORDERED that the Clerk of Court shall cause a copy of the Petition and this Order to be delivered to the Respondent as required by law. The Clerk of Court shall also provide certified copies of the Petition and this Order to Petitioner upon request. This Order is granted without bond. Pursuant to 42 USC 3796, the Clerk shall not charge the victim any fees for filing, issuing, registering, or serving this protection order.

22. ALL OF THE TERMS OF THIS ORDER REMAIN IN FULL FORCE AND EFFECT FOR A PERIOD OF ~~FIVE YEARS FROM ISSUANCE, OR~~ UNTIL July 1, 2007 unless earlier modified or dismissed by order of this Court. Except for paragraphs 12, 13, 14, and 15 above, this order survives a divorce, dissolution of marriage, or legal separation. Until this order is delivered to Respondent,

the terms of the *Ex Parte* CPO remain in effect.

IT IS SO ORDERED:

/s/_____
Judge/Magistrate

/s/ Neal B. Bronson_____
/s/Judge Fedder

NOTICE TO RESPONDENT: THE PERSONS PROTECTED BY THIS ORDER CANNOT GIVE YOU LEGAL PERMISSION TO CHANGE OR VIOLATE THIS ORDER. IF YOU CONTACT OR GO NEAR THE PROTECTED PERSONS, EVEN WITH THEIR PERMISSION, YOU MAY BE ARRESTED. ONLY THE COURT CAN CHANGE THIS ORDER. IF THERE IS ANY REASON WHY THIS ORDER SHOULD BE CHANGED, YOU MUST ASK THE COURT TO CHANGE IT. YOU ACT AT YOUR OWN RISK IF YOU DISREGARD THIS WARNING.

I have read this Consent Agreement and Civil Protection Order and agree to its terms.

/s/ Sarah Kirby_____
SIGNATURE OF PETITIONER

* * *

I have read this Consent Agreement and Civil Protection Order and agree to its terms.

/s/ Charles N Combs
SIGNATURE OF RESPONDENT

* * *

NOTICE OF FINAL APPEALABLE ORDER

Copies of the foregoing Order, which is a final appealable order, were mailed by ordinary U.S. mail or hand delivered to the parties indicated on the 26 day of July, 2002.

By: /s/
CLERK OF COURT

A time-stamped copy of this Order shall be mailed or handed to:

X Petitioner
Attorney for Petitioner
X Respondent
Attorney for Respondent
Counseling Program: _____
X The Warren County Sheriff
X Police Department Where Petitioner Resides:
Franklin
Police Department Where Petitioner works:
_____
CSEA
X Other: ARCS

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

SARAH ANN KIRBY

vs 02DV1302

CHARLES N COMBS

July 26, 2002

To: CHARLES N COMBS

YOU ARE HEREBY NOTIFIED THAT A FINAL APPEALABLE JUDGMENT WAS ENTERED IN THE ABOVE CASE ON JULY 26, 2002.

JAMES L. SPAETH
CLERK OF COURTS
500 JUSTICE DR.
LEBANON, OHIO 45036

CC:
SARAH ANN KIRBY

CLERK COPY

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION AT CINCINNATI

CASE NO. 1:05-CV-323

[Dated March 23, 2006]

LADAWNYA K. CARPENTER, et al.,)
)
Plaintiffs,)
)
vs.)
)
CITY OF FRANKLIN, OHIO, et al.,)
)
Defendants.)

JUDGE MICHAEL H. WATSON

AFFIDAVIT OF SARAH KIRBY

STATE OF OHIO)
) SS:
COUNTY OF WARREN)

Now comes Sarah Kirby, being first duly cautioned and sworn, states the following as true to the best of her knowledge:

1. I am over the age of eighteen years and make this affidavit on my own personal knowledge about the facts in this case.

2. On July 26, 2002, I entered into a custody agreement with Nick Combs so that I could visit with my son Tyler Combs on the weekends. Attached is a true copy of the agreement both Nick Combs and I signed.

3. More than once, I arrived at the Franklin police station to pick up Tyler after July 26, but Nick did not bring Tyler to see me.

4. I wrote letters to the judge and I spoke to an Advocate at the County Court because I did not understand why Nick Combs was not bringing my son to see me when I was paying child support and when we had agreed that I would have visitation every weekend.

5. The advocate told me that I should file for contempt of court against Nick Combs for violating the consent agreement we had entered into, and that is what I did. The advocate assisted me in filling out the papers.

6. I filed these papers during the week of or before the incident that this lawsuit concerns.

7. When I went to the Franklin police station on August 16, 2002, I told the officers that I had filed for contempt of court against Nick Combs, that he was supposed to bring Tyler to the station that evening, and that there was a warrant for him.

8. My father and I followed the police officers to Nick Combs' apartment. We waited outside. I saw Nick being escorted to the police cruiser.

9. Then, the officers brought Tyler to me.

10. After that, Nick's sister, LaDawnya, came running out of the apartment. She cursed at me and called me names. I saw and heard one of the police officers say something to her, but I wasn't sure what he said. LaDawnya kept walking towards me and pointed to me as she yelled something about me bringing Tyler back at 6:00 on Sunday. That is when the officers arrested her.

FURTHER AFFIANT SAYETH NAUGHT.

/s/
Sarah Kirby

Sworn to before me and subscribed in my presence by the said Sarah Kirby on this 23rd day of March 2006.

/s/ Diana L. Grooms
Notary Public

[SEAL]
DIANA L. GROOMS
Notary Public, State of Ohio
My Comm. Expires February 28, 2007

EXHIBIT A

WARNING CONCERNING THE ATTACHED DOMESTIC VIOLENCE PROTECTION ORDER

NOTE: *Rules of Superintendence 10.01 and 10.02 require this Warning to be attached to the FRONT of all civil and criminal domestic violence protection orders issued by the courts of the State of Ohio.*

WARNING TO RESPONDENT/DEFENDANT

Violating the attached Protection Order is a crime, punishable by imprisonment or fine or both, and can cause your bond to be revoked or result in a contempt of court citation against you.

This Protection Order is enforceable in all 50 states, the District of Columbia, tribal lands, and U.S. Territories pursuant to the Violence Against Women Act, 18 U.S.C. Section 2265. Violating this Protection Order may subject you to federal charges and punishment. You may also be subject to federal penalty for possessing, transporting, or accepting a firearm under the Gun Control Act, 18 U.S.C. Section 922(g)(8).

Only the Court can change this order. The Petitioner/Alleged Victim cannot give you legal permission to change this order. If you go near the Petitioner/Alleged Victim, even with the Petitioner's/Alleged Victim's consent, you may be arrested. If you and the Petitioner/Alleged Victim want to resume your relationship you must ask the

Court to modify or dismiss this Protection Order. Unless the Court modifies/dismisses this order, you can be arrested for violating this Protection Order. You act at your own risk if you disregard this WARNING.

WARNING TO PETITIONER/ ALLEGED VICTIM

You **cannot** change the terms of this order by your words or actions. Only the Court can allow the Respondent/Defendant to contact you or return to your residence. If you and the Respondent/Defendant want to resume your relationship, you **must** ask the Court to modify or dismiss this Protection Order.

NOTICE TO ALL LAW ENFORCEMENT AGENCIES AND OFFICERS

The attached Protection Order is enforceable in all jurisdictions. Violation of this Protection Order, regardless of whether it is a criminal or civil Protection Order, is a crime under R.C. 2919.27. Law enforcement officers with powers to arrest under R.C. 2935.03 for violations of the Ohio Revised Code must enforce the terms of this Protection Order as required by R.C. 2919.26, 2919.27 and R.C. 3113.31. If you have reasonable grounds to believe that Respondent/ Defendant has violated this Protection Order, it is the preferred course of action in Ohio under R.C. 2035.03 to arrest and detain Respondent/Defendant until a warrant can be obtained. Federal Law prohibits charging a fee to the victim for service of this order.

FORM 10.01-G WARNING CONCERNING ATTACHED DOMESTIC VIOLENCE PROTECTION ORDER

Revised 6/1/02
Discard all previous versions of this form

IN THE COMMON PLEAS COURT
WARREN COUNTY, OHIO

[Filed July 26, 2002]

ORDER OF PROTECTION
Per ORC 3113.31(F)(2), this order is indexed at

WARREN COUNTY SHERIFF
LAW ENFORCEMENT AGENCY WHERE INDEXED

(513) 695-1280
PHONE NUMBER

Case No. 02 DV 1302
Judge/Magistrate Flannery/Iversen
County WARREN State OHIO

CONSENT AGREEMENT AND DOMESTIC VIOLENCE CIVIL PROTECTION ORDER (R.C. 3113.31)
* * *
375-801 DIS

PETITIONER:

Sarah		Kirby
First	Middle	Last

v.

RESPONDENT:

Charles		Combs
First	Middle	Last

Relationship to Petitioner: Parent of child
Address where Respondent can be found:
30 Beam Dr. # D
Franklin, OH 45005

* * *

PERSON(S) PROTECTED BY THIS ORDER:

Petitioner: Sarah Kirby DOB: [REDACTED]/82

* * *

RESPONDENT IDENTIFIERS

SEX	RACE	HT	WT
M	C	5'7"	270

EYES	HAIR	DATE OF BIRTH
Blue	Blond	[REDACTED]-74

DRIVERS LIC NO. & EXP. DATE	STATE
	Ohio

* * *

(Violence Against Women Act, 18 U.S.C. 2265,
Federal Full Faith & Credit Declaration:
Registration of this form is not
required for enforcement.)

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent will be provided with

reasonable notice and opportunity to be heard within the time required by Ohio law. Additional findings of this order are set forth below.

THIS COURT HEREBY ORDERS:

That the above named Respondent be restricted from committing further acts of abuse or threats of abuse.

That the above named Respondent be restrained from any contact with Petitioner and other protected persons named in this order, as set forth below.

Additional terms of this order are set forth below:

The term of this order shall be effective until 7/01/07. DATE CERTAIN - MAXIMUM FIVE YEARS

WARNINGS TO RESPONDENT: See the warnings page attached to the front of this Order.

Form 10.01-I CONSENT AGREEMENT AND DOMESTIC VIOLENCE CIVIL PROTECTION ORDER

Revised 6/1/02
Discard all previous versions of this form

This proceeding came on for a hearing on July 8, 2002 before the Court on the undersigned Magistrate pursuant to Civil Rule 53 and the ~~*Ex Parte* Order filed _____, _____~~. The following individuals were presented: petitioner with Ms. Persyk from ACRS and respondent. The parties agree to waive their notice and hearing rights and their rights under Civil Rule

53, including the right to request findings of fact and conclusion of law and to file objections to the Magistrate's Decision in this matter.

ALL OF THE PROVISIONS CHECKED BELOW APPLY TO THE RESPONDENT

X 1. RESPONDENT SHALL NOT ABUSE the protected persons named in the Order by harming, attempting to harm, threatening, molesting, following, stalking, bothering, harassing, annoying, contacting, or forcing sexual relations on them. [NCIC 01 and 02]

* * *

X 5. RESPONDENT SHALL NOT ENTER the residence, school, business, place of employment, or day care centers of the protected persons named in this order, including the buildings, grounds and parking lots at those locations.

X 6. RESPONDENT SHALL STAY AWAY FROM PETITIONER and all other protected persons named in this order, and shall not be present within XXX yards or 100 yards (distance) of protected persons, wherever protected persons may be found, or any place the Respondent knows or should know the protected persons are likely to be, <u>even with Petitioner's permission</u>. If Respondent accidently comes in contact with protected persons in any public or private place, Respondent must depart *immediately*. This

order includes, encounters on public and private roads, highways, and thoroughfares. [NCIC 04]

X 7. RESPONDENT SHALL NOT INITIATE ANY CONTACT with the protected persons named in this Order or their residences, businesses, places of employment, schools, day care centers, and babysitters. Contact includes, but is not limited to, telephone, fax, e-mail, voice mail, delivery service, writing, or communications by any other means in person or through another person [NCIC 05]

* * *

X 10. RESPONDENT SHALL NOT CAUSE OR ENCOURAGE ANY PERSON to do any act prohibited by this order.

X 11. RESPONDENT SHALL NOT POSSESS, USE, CARRY, OR OBTAIN ANY DEADLY WEAPON. Respondent shall turn over all deadly weapons in Respondent's possession to the law enforcement officer who serves Respondent with this Order as follows: ___

Any law enforcement agency is authorized to take possession of deadly weapons pursuant to this paragraph and hold them in protective custody until further Court order. [NCIC 07]

X 12. PARENTAL RIGHTS AND RESPONSIBILITIES ARE TEMPORARILY

ALLOCATED AS FOLLOWS: Child to be with Mr. Combs from Sunday at 6:00 pm - Friday at 6:00 pm. Child to be with Ms. Kirby from Fri at 6:00 pm - Sunday at 6:00 pm.

This order applies to the following child(ren): Tyler Combs (dob [REDACTED]-01)

X 13. VISITATION ORDERS DO NOT PERMIT RESPONDENT TO VIOLATE THE TERMS OF THIS ORDER.

* * *

X (B) As a limited exception to paragraph 6, temporary visitation rights are established as follows: See # 12

* * *

X 18. IT IS FURTHER ORDERED that: All exchanges to take place at Franklin police department.
Respondent to provide a copy of Tyler's Social Security Card to petitioner at exchange of child on Friday July 26, 2002 at 6:00 PM.

* * *

20. IT IS FURTHER ORDERED that Respondent shall pay the remaining court costs in this action.

21. IT IS FURTHER ORDERED that the Clerk of Court shall cause a copy of the Petition and this Order to be delivered to the Respondent as required by law. The Clerk of Court shall also provide certified copies of the Petition and this Order to Petitioner upon request. This Order is granted without bond. Pursuant to 42 USC 3796, the Clerk shall not charge the victim any fees for filing, issuing, registering, or serving this protection order.

22. ALL OF THE TERMS OF THIS ORDER REMAIN IN FULL FORCE AND EFFECT FOR A PERIOD OF ~~FIVE YEARS FROM ISSUANCE, OR~~ UNTIL July 1, 2007 unless earlier modified or dismissed by order of this Court. Except for paragraphs 12, 13, 14, and 15 above, this order survives a divorce, dissolution of marriage, or legal separation. Until this order is delivered to Respondent, the terms of the *Ex Parte* CPO remain in effect.

IT IS SO ORDERED:

/s/ _____
Judge/Magistrate

/s/ Neal B. Bronson _____
/s/Judge Fedder

NOTICE TO RESPONDENT: THE PERSONS PROTECTED BY THIS ORDER CANNOT GIVE YOU LEGAL PERMISSION TO CHANGE OR VIOLATE

THIS ORDER. IF YOU CONTACT OR GO NEAR THE PROTECTED PERSONS, EVEN WITH THEIR PERMISSION, YOU MAY BE ARRESTED. ONLY THE COURT CAN CHANGE THIS ORDER. IF THERE IS ANY REASON WHY THIS ORDER SHOULD BE CHANGED, YOU MUST ASK THE COURT TO CHANGE IT. YOU ACT AT YOUR OWN RISK IF YOU DISREGARD THIS WARNING.

I have read this Consent Agreement and Civil Protection Order and agree to its terms.

/s/ Sarah Kirby
SIGNATURE OF PETITIONER

* * *

I have read this Consent Agreement and Civil Protection Order and agree to its terms.

/s/ Charles N Combs
SIGNATURE OF RESPONDENT

* * *

NOTICE OF FINAL APPEALABLE ORDER

Copies of the foregoing Order, which is a final appealable order, were mailed by ordinary U.S. mail or hand delivered to the parties indicated on the 26 day of July, 2002.

By: /s/
CLERK OF COURT

A time-stamped copy of this Order shall be mailed or handed to:

X Petitioner
Attorney for Petitioner
X Respondent
Attorney for Respondent
Counseling Program: _____
X The Warren County Sheriff
X Police Department Where Petitioner Resides: Franklin
Police Department Where Petitioner works: _____
CSEA
X Other: ARCS

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

SARAH ANN KIRBY

vs 02DV1302

CHARLES N COMBS

July 26, 2002

To: CHARLES N COMBS

YOU ARE HEREBY NOTIFIED THAT A FINAL APPEALABLE JUDGMENT WAS ENTERED IN THE ABOVE CASE ON JULY 26, 2002.

JAMES L. SPAETH
CLERK OF COURTS
500 JUSTICE DR.
LEBANON, OHIO 45036

CC:
SARAH ANN KIRBY

APPENDIX H

Exhibit 1

COURT OF COMMON PLEAS
WARREN COUNTY, OHIO
CIVIL DIVISION

Case No. 03 CV 61265

[Dated April 15, 2004]

LADAWNYA K. CARPENTER)
121 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
CHARLES N. COMBS)
121 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
TYLER COMBS)
A minor child)
121 East Fourth Street)
Franklin, Ohio 45005)
)
Plaintiffs)
)
-v-)

CITY OF FRANKLIN, OHIO)
C/O Law Director)
35 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
LESLIE WAYNE BOWLING)
41 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
SERGEANT WHITMAN)
41 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
OFFICER DIEKMAN)
41 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
SARAH A. KIRBY)
55 Ashgrove Court)
Franklin, Ohio 45005)
)
Defendants)
_____)

AFFIDAVIT OF CHARLES N. COMBS

Comes now Charles N. Combs, being of full age and competency, who voluntarily makes the following statements under oath and to the best of his independent knowledge:

1. Attached is a true and accurate copy of a statement that Mary Zolecki wrote in her own handwriting.

2. On the date of August 16, 2002 I was caring for my son, Tyler Combs at the address of 30 Beam Drive, Apt. D, Franklin, Ohio. At the time, my sister, LaDawnya K. Carpenter, and I were inside the apartment with LaDawnya's kids and Tyler.

3. On the date of August 16, 2002, Tyler Combs was in no danger of harm and was being carefully and safely cared for by my sister, LaDawnya K. Carpenter, and me.

4. On August 16, 2002, the Franklin Police Department, through its officers, Leslie Wayne Bowling, Russell Whitman, and Diekman, forced their way into the apartment and refused to show any search or arrest warrant to Charles N. Combs or LaDawnya K. Carpenter.

5. On August 16, 2002, the Franklin Police Department forcibly took Tyler Combs from his father, and custodial parent, Charles N. Combs and gave Tyler Combs to Sarah A. Kirby.

6. By putting Tyler A. Combs into the possession of Sarah A. Kirby, the Franklin Police Department placed Tyler in danger, knowing, and having reason to know that Tyler had already been injured while in the presence of Sarah A. Kirby.

7. Although both LaDawnya K. Carpenter and I asked the police to see an arrest warrant or a Court Order requiring them to take Tyler A. Combs or to arrest Charles N. Combs, the Franklin Police refused and failed to show us any paper work, warrants or Court Orders.

8. When the police left the apartment with Tyler on August 16, 2002, I was arrested and led from the apartment in hand cuffs.

9. The only thing I heard LaDawnya K. Carpenter say outside the apartment was she told Sarah A. Kirby that she had to have Tyler back to his father on Sunday by 6:00 P.M.

10. At that point, the Franklin Police officers, particularly, Leslie Wayne Bowling, (the officer Mary Zolecki is identifying as being the officer in the white shirt), rushed LaDawnya from behind, pulled her arms behind her and pushed her out to the parking lot of the apartment building.

11. The entire time officer Bowling was pushing LaDawnya, he was trying to trip her and

several times made her almost fall onto the sidewalk.

12. At all times, LaDawnya was telling Bowling that she was not going to resist him and that he was hurting her.

13. Officer Bowling and the two other Franklin Police officers forcibly pushed LaDawnya into the side of a van parked in the parking lot and made a dent in the van with her body.

14. The whole time that the police officers were pushing LaDawnya into the van they were pulling back on both her arms.

15. LaDawnya was not resisting the police and they all three piled onto her and repeatedly crushed her against the van while pulling back on both her arms.

16. LaDawnya had previously had surgery on one of her shoulders and she was pleading with the officers to not hurt her.

17. The police officers continued to push and pull on her and to slam her into the van.

18. I was charged with violating a TPO and forced to hire the legal services of a lawyer to represent me.

19. I have paid attorney fees for representation in defending the charge of violating a TPO

and I still owe the sum of $4,500.00 for attorney fees.

20. The Franklin Municipal Court without a trial dismissed the criminal charge against me.

21. Charles N. Combs was charged with the crime of violating a Temporary Protection Order and that charge was dismissed without a trial. The City of Franklin continued to prosecute me and force me to hire a lawyer even though the Court had advised the City on the record that I should not have been charged with a crime.

22. After we informed the City of Franklin that Mary Zolecki had given an eyewitness statement, the City of Franklin charged Mary Zolecki with a crime and that charge was also dismissed without a trial.

23. I did not know Mary Zolecki before August 16, 2002 although I had said hi to her once or twice.

24. The City of Franklin has attempted to intimidate the witness, Mary Zolecki.

25. As a result of the false charge against me, I was incarcerated in the Warren County Jail and was forced to hire a lawyer to get me out.

26. As a result of my incarceration, I lost time from my employment and experienced stress, anxiety and humiliation.

Further, Affiant Saith Naught.

/s/
Charles N. Combs

State of Ohio

County of Warren

Before me personally appeared Charles N. Combs, who identified himself to me and who signed this affidavit voluntarily and in my presence this 15th day of April, 2004, in Warren County, Ohio.

/s/ Roger B. Staton
Notary Public State of Ohio

Roger B. Staton, Attorney at Law
Notary Public - State of Ohio
My Commission has no expiration
date Section 147.03 R.C.
CLERK COPY

APPENDIX I

IN THE COMMON PLEAS COURT
OF WARREN COUNTY, OHIO
CIVIL DIVISION

CASE NO. 2003 CV 61265

[Dated May 31, 2004]

LADAWNYA K. CARPENTER, et al., Plaintiffs,	)
vs.	)
CITY OF FRANKLIN, OHIO, et al., Defendants.	)

JUDGE BRONSON
MAGISTRATE FEDDERS

AFFIDAVIT OF LESLIE WAYNE BOWLING

STATE OF OHIO	)
	) SS:
COUNTY OF WARREN	)

Now comes Leslie Wayne Bowling, being first duly cautioned and sworn, states the following as true to the best of his knowledge:

1. I am a sworn law enforcement officer for the City of Franklin Police Department and was so employed by the City of Franklin on August 16, 2002.

2. Attached to this affidavit is a true and accurate copy of the Incident/Offense Report that I completed in reference to my involvement in the incident underlying Plaintiffs' allegations in the above-captioned case. Also attached to this affidavit are true and accurate copies of the Individual Daily Logs maintained in the ordinary course of business in reference to the incident occurring on August 16, 2002.

3. All facts set forth in the attached Incident/Offense Report and Individual Daily Logs are true and accurate to the best of my knowledge. In addition to the material submitted, the following points are relevant.

4. On August 16, 2002, acting in my capacity as a police officer for Franklin Police Department, I was present at 30 Beam Drive, Apartment D, Franklin, Ohio, to assist fellow officer Troy Wolf.

5. I deny the Plaintiffs' allegations that the responding officers, including myself, forced our way into the apartment or refused to show a search or arrest warrant.

6. Sarah Kirby was also present at 30 Beam Drive at the time of the arrest of Charles Combs, and she sought physical custody of minor Tyler Combs, the child of Kirby and Charles Combs.

7. Plaintiffs Charles Combs and LaDawnya Carpenter disputed Kirby's right to custody of Tyler Combs, and Officer Wolf requested a supervisor to resolve the dispute.

8. The responding supervisor was Sergeant Russell Whitman.

9. Sergeant Whitman, after speaking to Mr. Combs' attorney and an individual from Warren County Children's Services, made the decision to hand over physical custody of the minor to Kirby because Mr. Combs had been arrested.

10. I deny Plaintiffs' allegations that there was any reason for the officers to believe minor Tyler Combs was in any danger while in his mother's custody.

11. Initially, Carpenter continued to dispute Kirby's right to possession of the child. She used profanities and stated the police might as well take her because she was not giving up control of the child.

12. Sergeant Whitman spoke to Carpenter about her inappropriate behavior and convinced Carpenter to prepare the child to leave with Kirby. After Carpenter had dressed the child and was sitting on a bed in the apartment, I grabbed her arm to assist her to her feed, and Carpenter gave the child to Sergeant Whitman.

13. As the officers were leaving the apartment with the child, Carpenter was screaming profanities and it sounded as though she was throwing objects

about in the apartment. There were other small children in the apartment at this time.

14. Upon giving the child to Kirby, Carpenter rushed out the front door of the apartment complex. She pointed to Kirby in a threatening manner, and yelled, "You better have him back here by 6 p.m. on Sunday, bitch."

15. I then told Carpenter she was under arrest and told her to turn around and put her hands [WB] behind her back. Carpenter was to be charged with disorderly conduct and the failure to desist.

16. I deny Plaintiff's allegations that I intentionally tried to trip Carpenter as I as walking her to the patrol car.

17. I deny Plaintiffs' allegations that Carpenter informed me of any injury to her shoulder or arms as I was attempting to place handcuffs on her.

18. Instead, after I had placed one handcuff on Carpenter, she began to turn away from me in such a way that I was pushing her against a parked vehicle, and then she tried to push away from the parked vehicle. With the assistance of Sergeant Whitman and Officer Diekman, we were able to place the other handcuff onto Carpenter, and Officer Diekman and I were able to place Carpenter into the patrol car.

19. I deny Plaintiffs' allegations that Sergeant Whitman, Officer Diekman or I "slam[med]" Carpenter into a van.

20. The arrest of Charles Combs was based upon a lawful arrest warrant, and the arrest of LaDawnya Combs was based upon probable cause.

21. At all times in the course of arresting both Charles Combs and LaDawnya Carpenter, no officer, including myself, used more force than was necessary to effectuate the arrests.

22. At no time did I, or any other officer of the Franklin Police Department, intimidate witnesses either to the Combs arrest, to the Carpenter arrest, or to the above-captioned case.

FURTHER AFFIANT SAYETH NAUGHT.

/s/Leslie Wayne Bowling
LESLIE WAYNE BOWLING

Sworn to before me and subscribed in my presence by the said Leslie Wayne Bowling on this 31st day of May 2004.

/s/Christopher L. Musgrave
Notary Public

[SEAL]

Franklin Police Department
400 Anderson ST
Franklin, OH 45005
Phone 937-746-2882 Fax 937-743-7750
Incident / Offense Report
01-02-003330

Print Date/Time:
9/30/2003 1807

EVENT INFORMATION

Report No. 01 - 02- 003330 Local Report No
Report Date/Time: 8/16/2002 1821
Type: 9.20 Disorderly Conduct
Event Date/Time: 8/16/2002 1821 To: 8/16/2002 1907
Comment: Lawdawnya Carpenter
Disposition: Cleared

EVENT LOCATION

30 Beam CIR D
Franklin, OH 45005-0000

Location Type: Multiple Dwelling
County: Warren
Map / Ref:

Intersection:
Beat / District: Franklin
Zone / Area: Franklin

ADMINISTRATION

Reporting Officer: Bowling, Leslie Wayne.

Entered By: Diekman, Edward R.
Approved By:

DISPATCH INFORMATION

Call Number: Call Type: Walk-In At P.D.
Received Time: 1757 End Time: 1907
Elapsed Time: 70

DISPATCHED UNIT(S)
Unit Number: 36 Dispatched: 1757 Enroute: 1757

On Scene: 1821 Cleared: 1907 Elapsed: 141

OFFENSE INFORMATION

Offense No.: 1 S 2917.11(E)
Disorderly Conduct - Fail To Desist
Attempted / Committed: C
Larceny Type: Degree: Misdemeanor- 4
Location Type: Multiple Dwelling
Motive: Theft By Computer: N
Criminal Activity:
Disposition: Adult-Arrested Held
Review Officer: Bowling, Leslie Wayne

PERSON INFORMATION

DEF No.: 1 Carpenter, LaDawnya K
121 E 4TH ST. FRANKLIN, OH, 45005
SSN:
Phone: (513)743-6115
Date of Birth: [REDACTED]/1969 Age: 33YRS
Date of Emancipation: //
D.L. No.: RA491964 State: O Exp. Date: 8/28/1996

Place of Birth: Country:
Gender: F Race: W Hgt: 05'05" Wgt: 125 To 125
Hair: BLN Eyes BLU
Residential Status: Resident
Marital Status:
Statement Obtained:

ARREST INFORMATION FOR

Arrest Type: Complaint/Officer In
Arrest Date/Time: 8/16/2002 19:07
Local Arrest No.: Warrant No.:
Arrest Department: Franklin Police Department
Assisted By: Whitman, Russell Alan
Assisting Department:
Review Officer:

ARREST LOCATION

30 Beam CIR. D Franklin, OH, 45005-0000
Disposition: Handled Within Dept

CHARGE INFORMATION

Charge No.: 1
Related Offense No.: 1
Charge: 2917.11(E) Disorderly Conduct- Fail To D
Count: 1 Degree:
MM Ticket No.:
Disposition:

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003330	8/16/2002 1821

Narrative Type: Initial Report
Topic:

On the stated date I was with officers at 30 Beam Drive apartment D for a custody dispute. The sister (defendant) of the father of the child was upset that her brother (father) had been arrested for a tpo violation. The mother of the child wanted to take the child with the sister refusing. Sergeant Whitman spoke to Children Services on the telephone to see if they had any other information as to why the mother should not have the child. Sergeant Whitman advised the defendant that unless there was a court order the mother could have the child. The defendant began screaming profantities with several family members including juveniles in the apartment. The defendant stated the police might as well take her because she was not going to let the juvenile go. After speaking with her several times including family members she began to dress the juvenile. After dressing him the defendant sat on the bed after Sergeant Whitman told her to get up and hand him the child. I then grabbed the defendants left arm pulling her up. At this time Sergeant Whitman was given the child. The defendant began to repeat what she had been doing with officers leaving the apartment. As I was leaving I heard the defendant screaming and what appeared to be throwing objects about in the apartment. There were at least Two other juveniles in the apartment under the age of Two. Once outside I followed Sergeant

Whitman to the mothers vehicle. At this time the front door of the apartment complex flew open. I observed the defendant point her finger at the mother and states "You better have him back by 6pm on Sunday, bitch" at the top of her voice. At this time I told the defendant she was under arrest and to put her hands behind her back. At first the defendant complied as I walked her away from family members that had stepped outside. All of a sudden the defendant began to turn away from me with me pushing her against a parked vehicle. The defendant tried to come off of the vehicle with Sergeant Whitman and Officer Diekman assisting me. She was transported to W.C.J.

Narrative Reporting Officer: Bowling, Leslie W 1F17
Reporting Officer: Bowling, Leslie W 1F17
Narrative Date/Time: 8/16/2002 1907

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003330	8/16/2002 1821

Narrative Type: Case Progress Report
Topic: Interview With Sarah Kirby

On the stated date I conducted a taped interview with Sarah Kirby. During the interview, Kirby stated that she went to 30 Beam Drive Apartment D with police officers to help settle a custody dispute between her and Charles Combs. Kirby advised that while she waited outside the apartment, she heard Charles Combs and LaDawnya Carpenter (Combs' sister) arguing with the officers inside. Kirby and her father

were asked to go outside and wait by their vehicle– which they did.

Kirby stated an officer brought out her child to her. Shortly after this happened, Carpenter came running out of the apartment building, in a manner which made Kirby feel threatened, and told Kirby that she better have the baby back by 6 on Sunday. Kirby also stated that Carpenter said this was bullshit.

Kirby stated an officer told Carpenter to turn around that she was under arrest and Carpenter resisted the officer's arrest. Carpenter stated a second officer had to assist the officer in getting Carpenter handcuffed and to the vehicle.

See Transcripts

Narrative Reporting Officer: Hickey, Douglas J 1F39
Reporting Officer: Bowling, Leslie W 1F17
Narrative Date/Time: 9/04/2002 1824

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003330	8/16/2002 1821

Narrative Type: Case Progress Report
Topic: Interview With Vernon Kirby

On the stated date I conducted a taped interview with Vernon Kirby. During the interview, Vernon Kirby stated that as he was coming back from getting something to drink, he saw LaDawnya Carpenter come out of the Beam Apartment towards his daughter.

Vernon Kirby stated that he heard Carpenter tell his daughter (Sarah Kirby) that she better have the child back by 6 on Sunday. Then Carpenter called her a fucken bitch and a whore. Vernon stated that an officer told Carpenter she was under arrest and she resisted the officer by moving her hands. Vernon stated that a second officer assisted the officer in getting Carpenter handcuffed and walking her to a vehicle.

See Transcripts

Narrative Reporting Officer: Hickey, Douglas J 1F39
Reporting Officer: Bowling, Leslie W 1F17
Narrative Date/Time: 9/04/2002 1833

Image of Event
01-02-003330

Comment: Ladawnya Carpenter
Originally Taken: 8/26/02 17:31
Notes:

Image of Event
01-02-003330

Comment: Ladawnya Carpenter
Originally Taken: 8/26/02 17:31
Notes:

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 15:01:00
Page: 1

Complainant And Event Information

Date: 8/16/02 17:57
Report Number:
Entry Officer: 0205094

Event Information

Type Juvenile Visitation/Exchange
Disposition
How Received In Person On Station
Address FPD Franklin OH 45005
Unit(s) 125 121
Officer(s) 0205042

Caller Information

Name Kirby, Sara
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1757
Arrived: 000
Cleared: 000

Additional Information
Female advised Charles Combs is suppose to be here to exchange the child. He never arrived. Have outstanding warrant for him viol TPO. Unit enroute to ATL. Male found and IC. Female enroute to residence w/ officer.

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 15:01:25
Page: 1

Complainant And Event Information

Date: 8/16/02 18:21
Report Number:
Entry Officer: 0205094

Event Information

Type Juvenile Visitation/Exchange
Disposition

How Received Officer Initiated
Address 30 Beam Dr Apt D Franklin OH 45005
Unit(s) 125 121
Officer(s) 0205042

Caller Information

Name Wolf, Ptl, F36
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1821
Arrived: 1821
Cleared: 1907

Additional Information
Have Charles Combs IC for viol TPO, Sara Kirby enroute to pick up child. Paged Children Services--female called back, had her call Sgt Whitman at the residence 746-7072. Children Services called back and advised what was said on the recorded line. Advised male is in jail, mom has the right to take the child. Children Services advised nothing on file about abuse to the child, will leave message for their case worker. Sara Kirby has the child. Units cleared.

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 15:01:35
Page: 1

Complainant And Event Information

Date: 8/16/02 18:27
Report Number:
Entry Officer: 0205094

Event Information

Type Arrest - Franklin Warrant
Disposition
How Received Officer Initiated
Address 30 Beam Dr Apt D Franklin OH 45005
Unit(s) 125
Officer(s) 0205042

Caller Information

Name Wolf, Ptl, F36
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1827
Arrived: 000
Cleared: 1827

Additional Information
Charles Combs IC for TPO viol warrant. ssn/ [REDACTED]. Transported to WCJ.

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 15:01:50
Page: **1**

Complainant And Event Information

Date: 8/16/02 18:44
Report Number:
Entry Officer: 0205094

Event Information

Type Prisoner Transport
Disposition
How Received Officer Initiated
Address 30 Beam Apt D To WCJ Franklin OH 45005
Unit(s) 125
Officer(s) 0205042

Caller Information

Name Wolf, Ptl, F36
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1844
Arrived: 1908
Cleared: 1922

Additional Information
Transporting Charles Combs to WCJ-TPO viol. Released to Jail. Back in city at 1940

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 15:01:59
Page: 1

Complainant And Event Information

Date: 8/16/02 19:07
Report Number:
Entry Officer: 0205094

Event Information

Type Prisoner Transport
Disposition
How Received Officer Initiated
Address 30 Beam Apt D To FPD Franklin OH 45005
Unit(s) 122
Officer(s) 0205022

Caller Information

Name Bowling, Lt, F17
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1907
Arrived: 1909
Cleared: 1909

Additional Information
Transporting Ladawnya Carpenter to PD, BM-32142 (0)--EM-32143 (1.1).

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 15:02:05
Page: 1

Complainant And Event Information

Date: 8/16/02 19:07
Report Number:
Entry Officer: 0205094

Event Information

Type Arrest-Other Criminal
Disposition
How Received Officer Initiated
Address 30 Beam Apt D Franklin OH 45005
Unit(s) 122
Officer(s) 0205022

Caller Information

Name Bowling, Lt, F17
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1907
Arrived: 000
Cleared: 1907

Additional Information
One female IC, Ladawnya Carpenter--failed to desist.
Transported to PD later to WCJ.

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 15:02:17
Page: 1

Complainant And Event Information

Date: 8/16/02 19:28
Report Number:
Entry Officer: 0205094

Event Information

Type Prisoner Transport
Disposition
How Received Officer Initiated
Address FPD To WCJ Franklin OH 45005
Unit(s) 122
Officer(s) 0205022

Caller Information

Name Bowling, Lt, F17
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1928
Arrived: 1949
Cleared: 2004

Additional Information
Transporting Ladawnya Carpenter transported to WCJ. BM-32143 (0)--EM-32155 (12)

APPENDIX J

IN THE COMMON PLEAS COURT OF WARREN COUNTY, OHIO CIVIL DIVISION

CASE NO. 2003 CV 61265

[Dated May 31, 2004]

LADAWNYA K. CARPENTER, et al.,)
)
Plaintiffs,)
)
vs.)
)
CITY OF FRANKLIN, OHIO, et al.,)
)
Defendants.)

JUDGE BRONSON

AFFIDAVIT OF RUSSELL ALAN WHITMAN

STATE OF OHIO)
) SS:
COUNTY OF WARREN)

Now comes Russell Alan Whitman, being first duly cautioned and sworn, states the following as true to the best of his knowledge:

1. I am a sworn law enforcement officer for the City of Franklin Police Department and was so employed by the City of Franklin on August 16, 2002.

2. Attached to this affidavit is a true and accurate copy of the Incident/Offense Report completed by Officer Bowling with reference to my involvement in this incident involving Plaintiffs.

3. All facts set forth in the attached Incident/Offense Report are true and accurate to the best of my knowledge. Additionally, the following points are relevant.

4. On August 16, 2002, I responded to a call requesting a supervisor to the scene of an incident at 30 Beam Drive, Franklin, Ohio 45005. The subjects involved were LaDawnya Carpenter, Charles Combs, Sarah Kirby, and a minor child, Tyler N. Combs.

5. Charles N. Combs was arrested on August 16, 2002 under a lawful and outstanding warrant for the violation of a protection order.

6. Following the arrest of Charles Combs, there was a custody dispute as to whether LaDawnya Carpenter, Tyler's aunt, or Sarah Kirby, mother of Tyler, had a right to have custody of the minor child, Tyler N. Combs.

7. During this dispute, it was stated that there were court documents prohibiting Kirby from taking custody of the child.

8. While at the scene, Roger Staton, attorney for LaDawnya Carpenter and Charles Combs, was contacted by telephone by one of the individuals at the residence. At this time, I do not recall who that individual was. I was asked by that individual if I wanted to speak with their attorney, Roger Staton.

9. I spoke with Mr. Staton on the phone to determine the existence of any court order, which would prevent the police officers from giving custody of the minor child, Tyler Combs, to his mother, Sarah Kirby.

10. I was advised by Roger Staton that he had custody paperwork drafted, but nothing had been filed with the court as of that date.

11. I also contacted the Warren County Department of Children's Services by telephone to confirm that there were no existing court orders stating the child could not be with his mother.

12. I was advised by Warren County Children's Services that the mother, Sarah Kirby, had the right to take the child.

13. I deny Plaintiffs allegations that I had any knowledge the minor had been injured in the presence of Kirby.

14. Plaintiff Carpenter continued to boisterously dispute Kirby's right to custody of the minor.

15. I convinced Carpenter that she had to turn the minor over to his mother. The child was dressed and handed to me by Carpenter.

16. I carried the child out of the apartment complex and gave him to his mother, Kirby.

17. At some point, Carpenter rushed out of the apartment complex. She pointed to Kirby in a threatening manner, and yelled, "You better have him back here by 6 p.m. on Sunday, bitch."

18. Officer Bowling told Carpenter she was under arrest and began escorting her to the patrol car.

19. Carpenter began to resist Officer Bowling, and I assisted Officer Bowling to handcuff Carpenter.

20. I deny Plaintiffs' allegations that I pushed or slammed Carpenter into a van.

21. I reviewed Officer Bowling's Affidavit.

22. Based upon my affidavit, Officer Bowling's affidavit, and the affidavit attachments, probable cause existed for the arrest of Combs on the lawfully issued and outstanding arrest warrant and the arrest of Carpenter on the facts presented.

23. No officer involved on this call used an unlawful amount of force at any point in time.

24. To my knowledge, no officer involved in the arrest of Charles Combs or LaDawnya Carpenter ever intimidated a witness to these arrests.

FURTHER AFFIANT SAYETH NAUGHT.

/s/_____
Russell Alan Whitman

Sworn to before me and subscribed in my presence by the said Russell Alan Whitman on this 31st day of May 2004.

/s/ Christopher L. Musgrave
Notary Public

[SEAL]
Christopher L. Musgrave
Notary Public, State of Ohio
Warren County
My Comm. Expires Feb. 24, 2008

Franklin Police Department
400 Anderson ST
Franklin, OH 45005
Phone 937-746-2882 Fax 937-743-7750

Incident / Offense Report
01-02-003330

Print Date/Time:
9/30/2003 1807

EVENT INFORMATION

Report No. 01 - 02- 003330 Local Report No
Report Date/Time: 8/16/2002 1821
Type: 9.20 Disorderly Conduct
Event Date/Time: 8/16/2002 1821 To: 8/16/2002 1907
Comment: Lawdawnya Carpenter
Disposition: Cleared

EVENT LOCATION

30 Beam CIR D
Franklin, OH 45005-0000

Location Type: Multiple Dwelling
County: Warren
Map / Ref:

Intersection:
Beat / District: Franklin
Zone / Area: Franklin

ADMINISTRATION

Reporting Officer: Bowling, Leslie Wayne.

Entered By: Dickman, Edward R.
Approved By:

DISPATCH INFORMATION

Call Number: Call Type: Walk-In At P.D.
Received Time: 1757 End Time: 1907
Elapsed Time: 70

DISPATCHED UNIT(S)
Unit Number: 36 Dispatched: 1757 Enroute: 1757

On Scene: 1821 Cleared: 1907 Elapsed: 141

OFFENSE INFORMATION

Offense No.: 1 S 2917.11(E)
Disorderly Conduct - Fail To Desist
Attempted / Committed: C
Larceny Type: Degree: Misdemeanor- 4
Location Type: Multiple Dwelling
Motive: Theft By Computer: N
Criminal Activity:
Disposition: Adult-Arrested Held
Review Officer: Bowling, Leslie Wayne

PERSON INFORMATION

DEF No.: 1 Carpenter, LaDawnya K
121 E 4TH ST. FRANKLIN, OH, 45005
SSN:
Phone: (513)743-6115
Date of Birth: [REDACTED]/1969 Age: 33YRS
Date of Emancipation: //
D.L. No.: RA491964 State: O Exp. Date: 8/28/1996

Place of Birth: Country:
Gender: F Race: W Hgt: 05'05" Wgt: 125 To 125
Hair: BLN Eyes BLU
Residential Status: Resident
Marital Status:
Statement Obtained:

ARREST INFORMATION FOR

Arrest Type: Complaint/Officer In
Arrest Date/Time: 8/16/2002 19:07
Local Arrest No.: Warrant No.:
Arrest Department: Franklin Police Department
Assisted By: Whitman, Russell Alan
Assisting Department:
Review Officer:

ARREST LOCATION

30 Beam CIR. D Franklin, OH, 45005-0000
Disposition: Handled Within Dept

CHARGE INFORMATION

Charge No.: 1
Related Offense No.: 1
Charge: 2917.11(E) Disorderly Conduct- Fail To D
Count: 1 Degree:
MM Ticket No.:
Disposition:

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003330	8/16/2002 1821

Narrative Type: Initial Report
Topic:

On the stated date I was with officers at 30 Beam Drive apartment D for a custody dispute. The sister (defendant) of the father of the child was upset that her brother (father) had been arrested for a tpo violation. The mother of the child wanted to take the child with the sister refusing. Sergeant Whitman spoke to Children Services on the telephone to see if they had any other information as to why the mother should not have the child. Sergeant Whitman advised the defendant that unless there was a court order the mother could have the child. The defendant began screaming profantities with several family members including juveniles in the apartment. The defendant stated the police might as well take her because she was not going to let the juvenile go. After speaking with her several times including family members she began to dress the juvenile. After dressing him the defendant sat on the bed after Sergeant Whitman told her to get up and hand him the child. I then grabbed the defendants left arm pulling her up. At this time Sergeant Whitman was given the child. The defendant began to repeat what she had been doing with officers leaving the apartment. As I was leaving I heard the defendant screaming and what appeared to be throwing objects about in the apartment. There were at least Two other juveniles in the apartment under the age of Two. Once outside I followed Sergeant

Whitman to the mothers vehicle. At this time the front door of the apartment complex flew open. I observed the defendant point her finger at the mother and states "You better have him back by 6pm on Sunday, bitch" at the top of her voice. At this time I told the defendant she was under arrest and to put her hands behind her back. At first the defendant complied as I walked her away from family members that had stepped outside. All of a sudden the defendant began to turn away from me with me pushing her against a parked vehicle. The defendant tried to come off of the vehicle with Sergeant Whitman and Officer Diekman assisting me. She was transported to W.C.J.

Narrative Reporting Officer: Bowling, Leslie W 1F17
Reporting Officer: Bowling, Leslie W 1F17
Narrative Date/Time: 8/16/2002 1907

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003330	8/16/2002 1821

Narrative Type: Case Progress Report
Topic: Interview With Sarah Kirby

On the stated date I conducted a taped interview with Sarah Kirby. During the interview, Kirby stated that she went to 30 Beam Drive Apartment D with police officers to help settle a custody dispute between her and Charles Combs. Kirby advised that while she waited outside the apartment, she heard Charles Combs and LaDawnya Carpenter (Combs' sister) arguing with the officers inside. Kirby and her father

were asked to go outside and wait by their vehicle– which they did.

Kirby stated an officer brought out her child to her. Shortly after this happened, Carpenter came running out of the apartment building, in a manner which made Kirby feel threatened, and told Kirby that she better have the baby back by 6 on Sunday. Kirby also stated that Carpenter said this was bullshit.

Kirby stated an officer told Carpenter to turn around that she was under arrest and Carpenter resisted the officer's arrest. Carpenter stated a second officer had to assist the officer in getting Carpenter handcuffed and to the vehicle.

See Transcripts

Narrative Reporting Officer: Hickey, Douglas J 1F39
Reporting Officer: Bowling, Leslie W 1F17
Narrative Date/Time: 9/04/2002 1824

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003330	8/16/2002 1821

Narrative Type: Case Progress Report
Topic: Interview With Vernon Kirby

On the stated date I conducted a taped interview with Vernon Kirby. During the interview, Vernon Kirby stated that as he was coming back from getting something to drink, he saw LaDawnya Carpenter come out of the Beam Apartment towards his daughter.

Vernon Kirby stated that he heard Carpenter tell his daughter (Sarah Kirby) that she better have the child back by 6 on Sunday. Then Carpenter called her a fucken bitch and a whore. Vernon stated that an officer told Carpenter she was under arrest and she resisted the officer by moving her hands. Vernon stated that a second officer assisted the officer in getting Carpenter handcuffed and walking her to a vehicle.

See Transcripts

Narrative Reporting Officer: Hickey, Douglas J 1F39
Reporting Officer: Bowling, Leslie W 1F17
Narrative Date/Time: 9/04/2002 1833

APPENDIX K

Exhibit 6

COURT OF COMMON PLEAS
WARREN COUNTY, OHIO
CIVIL DIVISION

Case No. 03 CV 61265

[Dated April 15, 2004]

LADAWNYA K. CARPENTER)
121 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
CHARLES N. COMBS)
121 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
TYLER COMBS)
A minor child)
121 East Fourth Street)
Franklin, Ohio 45005)
)
Plaintiffs)
)
-v-)

CITY OF FRANKLIN, OHIO)
C/O Law Director)
35 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
LESLIE WAYNE BOWLING)
41 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
SERGEANT WHITMAN)
41 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
OFFICER DIEKMAN)
41 East Fourth Street)
Franklin, Ohio 45005)
)
And)
)
SARAH A. KIRBY)
55 Ashgrove Court)
Franklin, Ohio 45005)
)
Defendants)
_____)

AFFIDAVIT OF LADAWNYA K. CARPENTER

Comes now LaDawnya K. Carpenter, being of full age and competency, who voluntarily makes the following statements under oath and to the best offer independent knowledge:

1. Attached is a true and accurate copy of a statement that Mary Zolecki wrote in her own handwriting.

2. On the date of August 16, 2002 I was caring for my nephew, Tyler Combs at the address of 30 Beam Drive, Apt. D, Franklin, Ohio. At the time, my brother, Charles N. Combs, leased the apartment and I was inside the apartment with the permission and consent of Charles N. Combs.

3. On the date of August 16, 2002, Tyler Combs was in no danger of harm and was being carefully and safely cared for by my brother, Charles N. Combs and me.

4. On August 16, 2002, the Franklin Police Department, through its officers, Leslie Wayne Bowling, Russell Whitman, and Diekman, forced their way into the apartment and refused to show any search or arrest warrant to Charles N. Combs and me.

5. On August 16, 2002, the Franklin Police Department forcibly took Tyler Combs from his father, and custodial parent, Charles N. Combs and gave Tyler Combs to Sarah A. Kirby.

6. By putting Tyler A. Combs into the possession of Sarah A. Kirby, the Franklin Police Department placed Tyler in danger, knowing, and having reason to know that Tyler had already been injured while in the presence of Sarah A. Kirby.

7. Although both Charles N. Combs and I asked the police to see an arrest warrant or Court Order requiring them to take Tyler A. Combs or to arrest Charles N. Combs, the Franklin Police refused and failed to show us any paper work, warrants or Court Orders.

8. I did not physically resist the police when they forcibly took Tyler from me, but I did tell them they were wrong and that they were placing him in danger.

9. After the police left the apartment with Tyler on August 16, 2002, I followed them outside the apartment to make sure that Tyler was not injured and to check on my Mom.

10. When I went outside the apartment I told Sarah A. Kirby that she had to have Tyler back to his father on Sunday by 6:00 P.M.

11. At that point, the Franklin Police officers, particularly, Leslie Wayne Bowling, (the officer Mary Zolecki is identifying as being the officer in the white shirt), rushed me from behind, pulled my arms behind me and

pushed me out to the parking lot of the apartment building.

12. The entire time officer Bowling was pushing me, he was trying to trip me and several times made me almost fall onto the sidewalk.

13. At all times, I told Bowling that I was not going to resist him and that he was hurting me.

14. Officer Bowling and the two other Franklin Police officers forcibly pushed me into the side of a van parked in the parking lot and made a dent in the van with my body.

15. The whole time that the police officers were pushing me into the van they were pulling back on both my arms.

16. I was not resisting the police and they all three piled onto me and repeatedly crushed me against the van while pulling back on both my arms.

17. I had previously had surgery on one of my shoulders and I was pleading with the officers to not hurt me.

18. The police officers continued to push and pull on me and to slam me into the van.

19. Both my arms were and shoulders were injured and I am actively receiving medical

treatment for the injuries caused by the Franklin police officers.

20. I was charged with disorderly conduct and forced to hire the legal services of a lawyer to represent me.

21. I have paid attorney fees for representation in defending the charge of disorderly conduct and I still owe the sum of $4,500.00 for attorney fees.

22. The Franklin Municipal Court without a trial dismissed the charge of disorderly conduct.

23. Charles N. Combs was charged with the crime of violating a Temporary Protection Order and that charge was also dismissed without a trial.

24. After I informed the City of Franklin that Mary Zolecki had given an eyewitness statement, the City of Franklin charged Mary Zolecki with a crime and that charge was also dismissed without a trial.

25. I did not know Mary Zolecki before August 16, 2002.

26. I am still actively undergoing medical treatment for my injuries and I still have pain and disability from those injuries.

27. The City of Franklin has attempted to intimidate the witness, Mary Zolecki.

Further, Affiant Saith Naught.

/s/_____
LaDawnya K. Carpenter

State of Ohio

County of Warren

Before me personally appeared LaDawnya K. Carpenter, who identified herself to me and who signed this affidavit voluntarily and in my presence this 15th day of April, 2004, in Warren County, Ohio.

/s/ Roger B . Staton
Notary Public State of Ohio

Roger B. Staton, Attorney at Law
Notary Public - State of Ohio
My Commission has no expiration
date Section 147.03 R.C.

APPENDIX L

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

CASE NO. 03CV61265

[Dated April 19, 2005]

LaDAWNYA K. CARPENTER, et al.,)
Plaintiffs,)
)
vs.)
)
CITY OF FRANKLIN, OHIO, et al.,)
Defendants.)

Deposition of LaDAWNYA K. CARPENTER, Plaintiff herein, called by the Defendants for cross-examination pursuant to the Rules of Civil Procedure, taken before me, Caryl L. Blevins, a Notary Public in and for the State of Ohio, at the Warren County Courthouse, 500 Justice Center Drive, Lebanon, Ohio, on Tuesday, the 19th day of April, 2005, at 10:14 o'clock a.m.

[p.2]

EXAMINATION CONDUCTED Page

BY MS. JUSTICE: 6

EXHIBITS MARKED

(Thereupon, Defendants' Exhibit A was marked for purposes of identification.) 42
(Thereupon, Defendants' Exhibit B was marked for purposes of identification.) 88
(Thereupon, Defendants' Exhibits C-1 through C-7 were marked for purposes of identification.) 89
(Thereupon, Defendants' Exhibit D was marked for purposes of identification.) 190
(Thereupon, Defendants' Exhibit E was marked for purposes of identification.) 212
(Thereupon, Defendants' Exhibit F was marked for purposes of identification.) 220

REQUESTS FOR PRODUCTION

Q. Did you take any pi tures of the bruising of your bicep?

A. Yes.

Q. Do you still have those photos today?

A. Yes. Roger has them.

MS. JUSTICE: Roger, we'd like to

[p.3]

make a Rule 34 request for copies of those photos. 39

Q. Okay. Is there anything else other than the time that you lost at -- do you have any kind of records like a W-2 or income taxes from the time you worked at Home Depot?

A. Uh-hum.

Q. Could you provide your attorney with those so that we could get copies of those so we know what kind of income you lost?

A. Yeah. 74

Q. Did you take any photos of the cigarette burns and bruising?

A. Yes.

Q. Do you have copies of those photos today?

A. Yeah, somewhere.

Q. Could you provide copies of those photos to your attorney so that we could get copies of those? . . . 97

Q. Did Nick take any pictures of those bruises, the ones that he actually went down to

[p.4]

show the police?

A. I took those pictures, yes.

Q. Do you know if you still have copies of those pictures?

A. I -- I gave a lot of those to my brother, so I'm not -- I think I still have some, I could go through my pictures and see, but I'm not sure.

Q. Well, if you find any of those pictures, please turn them over to your attorney so that we can get copies of those. Okay?

A. I will do so. 105

MR. STATON: You do. Whether I have a copy or not, you have the tape, right?

THE WITNESS: Yes.

BY MS. JUSTICE:

Q. And please make sure that you provide a copy of that to your attorney if he doesn't already have one so that we can obtain a copy of that. Okay?

A. Yes, ma'am. 247

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APPEARANCES:
On behalf of the Plaintiffs:

Law Office of Roger D. Staton
By: Roger D. Staton
Attorney at Law
101 Dave Avenue
Suite B1
Lebanon, Ohio 45036

On behalf of the Defendants:

Subashi, Wildermuth & Ballato
By: Tabitha Justice

Attorney at Law
2305 Far Hills Avenue
Suite 200
Dayton, Ohio 45419

ALSO PRESENT:

Diana Grooms

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LaDAWNYA K. CARPENTER

of lawful age, Plaintiff herein, having been first duly cautioned and sworn, as hereinafter certified, was examined and said as follows:

CROSS-EXAMINATION

BY MS. JUSTICE:

Q. Okay. My name is Tabitha Justice. I represent City of Franklin and the police officers that you filed a lawsuit against.

A. Okay.

Q. I was wondering if you could just state your full name for the record.

A. LaDawnya Katherine Carpenter.

Q. And, LaDawnya, is it okay if I call you LaDawnya?

A. Yes.

Q. What was your date of birth?

A. 8/28/69.

Q. And your current address?

A. 4617 Greentree Road, Lebanon, Ohio.

Q. LaDawnya, we're here to discuss an incident that occurred back on August 16th, 2002 in which you and your brother Charles were arrested by the Franklin Police Department.

So that's kind of a mouthful, so

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when I say this incident, I'm referring to that incident. Okay?

A. Okay.

Q. If you need a break at any time while we're asking questions, just let me know.

A. Okay.

Q. If you need a break just to talk to your attorney, you need a restroom break, you need a drink, anything, just let me know and we'll be happy to take a break.

A. Okay.

Q. If you don't understand a question I ask, please tell me so; otherwise, I'm going to assume that you understood it and assume that you're answering the way that you actually remember or know the answer to. Okay?

A. Okay.

Q. Again, you just need to answer all the questions out loud for the court reporter because she's taking down everything that we say here today.

So please just say like yes or no or okay or something so that she can take it down. She can't take down like a nod of your head or a shake of your head or a shrug of your shoulders,

[p.8]

that kind of thing.

A. Right. Okay.

Q. So we're going to first just go ahead and get a little bit of background information.

LaDawnya, is Carpenter your married name?

A. Yes, it is.

Q. And what is your husband's name?

A. Ralph Carpenter.

Q. And was Ralph Carpenter your first marriage?

A. No.

Q. When did you marry Ralph Carpenter?

A. 1994.

Q. Who were you married to prior to Ralph Carpenter?

A. Gene Robinson.

Q. And when did you and Mr. Robinson marry?

A. Actually, it was found to be a common-law marriage.

Q. Wow. In Ohio?

A. Yes.

Q. Do you remember when it was found to

[p.9]

be a common-law marriage?

A. It was during -- right before the divorce, and the divorce was final in '92.

Q. And do you know why it was found to be a common-law marriage?

A. Mr. Kinese found other reasons that Mr. Robinson should be my husband.

Q. Is Mr. Kinese the judge?

A. Yes.

Q. For instance, you had been married long enough that you would be common-law man and wife?

A. We had lived together and had a business running together, and everything was in his last name.

Q. How long had you lived together?

A. Five years.

Q. And did you live together here in Ohio?

A. Yes.

Q. Did you have any children with Mr. Robinson?

A. Yes.

Q. What are the names of those children?

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A. Jerrid.

Q. How do you spell Jerrid?

A. J E R R I D.

Q. Does Jerrid have a middle name?

A. Alin, A L I N.

Q. Robinson?

A. Yes.

Q. When was Jerrid born?

A. 12/30/88.

Q. Do you have any other children with Mr. Robinson?

A. Yes. J A K I A H Y A, Jakiahya.

Q. Jakiahya?

A. Robinson.

Q. Does Jakiahya have a middle name?

A. Two, Edward Gene.

Q. And when was Jakiahya born?

A. 3/19/91.

Q. How old would this make Jerrid today?

A. He's sixteen.

Q. And so --

A. Jakiahya's fourteen.

Q. Fourteen? Do you have any other children with Mr. Robinson?

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A. No.

Q. Do you have any children with Ralph Carpenter?

A. Yes, three.

Q. And their names are?

A. Ralph Brian Anthony. It's Brian, honey, not Ryan.

Q. Oh, I'm sorry. Brian spelled with an I A N or Y A N?

A. I A N.

Q. When was Ralph born?

A. 4/25/94.

Q. And does Jerrid actually go by Jerrid?

A. Yes.

Q. And Jakiahya by Jakiahya?

A. No. He goes by Jake.

Q. And Ralph, does he go by Ralph?

A. Actually, he goes by Scooter.

Q. Scooter.

So Ralph would now be eleven; is that correct?

A. Yes. Actually, he'll be eleven this month.

Q. Okay. Yeah, I guess that makes

[p.12]

sense.

Do you have any other children with Mr. Carpenter?

A. Yeah, two more. Cody Trevor Wayne Carpenter.

Q. And Cody –

A. Yeah, C O D Y.

Q. -- Trevor Wayne?

When was Cody born?

A. 8/21/97.

Q. And so Cody is --

A. Seven.

Q. -- seven?

And does Cody go by Cody?

A. Yes. And then A L E E A N N A, Aleeanna Michelle.

Q. Okay. And Aleeanna Michelle only has one middle name?

A. Yes.

Q. When was Aleeanna born?

A. You asked me too quick. 2/19/02. She just turned three.

Q. Does Aleeanna go by Aleeanna?

A. Yes.

Q. Still at this point no nicknames,

[p.13]

right?

A. Well, I call her Lulu and Lucy, but --

Q. Okay. What are your parents' names, LaDawnya?

A. Actually, my father is deceased, and his name is Walter Edward Gross.

Q. When did Mr. Gross pass away?

A. '78.

Q. And your mother's name?

A. Beverly Ann Combs.

Q. Do you have any brothers or sisters?

A. I have one brother.

Q. And is this Charles Combs?

A. Yes.

Q. Does Charles go by the nickname of Nick?

A. Yes. His name is Charles Nicholas.

Q. Do you happen to know when Nick was born?

A. '74.

Q. Do you remember what your address was at the time of the incident on August --

A. Yes.

Q. -- 16th, 2002?

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A. Yes. 121 East Fourth Street --

Q. Fourth Street?

A. -- Fourth Street in Franklin.

Q. And I'm assuming your five children lived with you at this address at the time?

A. Actually, my son stays with my mother right now.

Q. Right now?

A. My oldest boy, yes.

Q. Jerrid?

A. Yes.

Q. Did Jerrid stay with your mother back in 2002?

A. No.

Q. Are you and Ralph Carpenter still married today?

A. Yes.

Q. And does Ralph live at your residence?

A. Yes.

Q. Your current residence?

A. Yes.

Q. Did Ralph live with you at 121 East Fourth Street in 2002?

A. Yes.

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Q. LaDawnya, did you go to high school?

A. Yes.

Q. Where did you go to high school?

A. Middletown.

Q. Did you graduate?

A. No. Actually, I got my GED the year I was supposed to graduate.

Q. You took the test the year you were supposed to graduate for that?

A. Yes.

Q. What year was that?

A. '87.

Q. Have you had any education since you attended Middletown High School?

A. Yes.

Q. And where did you go?

A. Miami University.

Q. In Miami, Ohio?

A. Yes.

Q. Did you attend college there at Miami University or at another campus?

A. Actually, I attended all three, Middletown, Hamilton, and Oxford.

Q. Do you have a degree from Miami University?

[p.16]

A. No. I'm three years on a Bachelor's.

Q. A Bachelor's in what?

A. Art education.

Q. Do you know when you plan to obtain that degree?

A. Actually, I'm taking a couple semesters off right now.

Q. Could you tell us why you decided to take some time off from school?

A. We had some bad incidents happen over the last year, just some chaos in my life.

Q. Was the chaos in your life related to the incident that occurred on August 16th, 2002?

A. No. I mean --

Q. Have you had custody of your children full-time since they were born?

A. Yes, ma'am.

Q. When you obtained your divorce from Gene, was custody disputed at that point of the two boys?

A. No, no.

Q. Could you tell us if the police were ever called as a result of a custody-related

[p.17]

matter with you and Gene?

MR. STATON: Objection. You may answer if you know.

THE WITNESS: There was times when I would refuse visitation and he would bring the police with him.

BY MS. JUSTICE:

Q. Why would you refuse visitation of the boys?

A. There was some abuse going on.

Q. Abuse by their father?

A. No, by the new wife.

Q. Were you ever arrested due to an altercation with the new wife of Gene Robinson?

MR. STATON: Objection. You may answer.

THE WITNESS: Actually, yes.

BY MS. JUSTICE:

Q. Was this due to the custody and visitation of one of your sons?

A. Actually, no. They were dropping my son off and an altercation happened.

Q. They were dropping your son off after having had visitation?

A. After having a weekend visitation,

[p.18]

yes.

Q. Was this Jerrid they were dropping off or Jake?

A. Both.

Q. Was your husband permitted to have visitation with your sons after this occasion?

A. Yeah and no. I mean, it was an off-and-on thing. There was abuse by her and then there was also abuse by him later, so --

Q. And did you take your exhusband to court to deal with the custody situation between -- with the two boys?

A. He actually went to jail over the abuse with my son, and instead of going to court, I agreed with the prosecutor outside of court that if he agreed not to come pick up the children unless they wanted to see him, I would not go any further with the charges.

Q. What year did this occur?

A. Oh, gosh. It's been like four or five years ago.

Q. Before this occurred, did your husband have court-ordered visitation of your two boys?

A. Yes.

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Q. And did he comply with your wishes that he only come when they wanted him to?

A. Yes.

Q. How often did your boys want to visit their father after this occurred?

A. It was quite some time after that, about a year and a half, before they chose to see him again.

Q. Do Jerrid and Jake get along with their father okay now?

A. Yeah, kind of.

Q. Is there any kind of requirement that the boys not be around their stepmother now?

A. He divorced her, so there's not a problem there.

Q. Is Gene married again now?

A. No. He has a girlfriend.

Q. And do you get along with Gene's current girlfriend?

A. Yes. I pretty much don't associate because the boys are old enough to do it on their own.

Q. You don't associate with Gene?

A. Yeah.

Q. How often would you say that you

[p.20]

talk to Gene in a given year?

A. Actually, I probably haven't talked to him in a good eight months at all.

Q. Have you had any problems with visitation issues or anything like that with Jerrid and Jake and their father since this all occurred?

A. Nothing except their father's drug problems.

Q. And do you deal with those problems through Gene or --

A. Through the boys.

Q. Okay. Through the boys?

A. Yes.

Q. When you had the altercation and were arrested with Gene's ex -- now exwife, who called the police?

A. Actually, she left my house and went to the police station.

Q. Did you call the police that day as well?

A. No, I don't believe.

Q. Were any charges filed as a result of that incident?

A. Yes.

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Q. Charges were filed against you?

A. Yes.

Q. Were any charges filed against his exwife?

A. No.

Q. What kind of charges were filed against you?

MR. STATON: Objection. You may answer.

THE WITNESS: I can't remember if it was -- I think it was assault, but it was dismissed and thrown out.

BY MS. JUSTICE:

Q. On what grounds was it dismissed and thrown out?

A. They -- they lied.

Q. Gene and his --

A. Wife.

Q. -- exwife lied?

A. Yes.

Q. This altercation that occurred between you and his exwife, this was back in 1994; is that correct?

A. No. No, no, no. No. It was a couple years after that, I'm pretty sure, because

[p.22]

Scooter was born in 1994, and he was a little older at that time.

Q. Who was born in '94?

A. Scooter.

Q. Oh, Ralph. Okay. So Ralph was already –

A. Yeah. He was -- when I had Scooter, I lived in an apartment. So we were already living at 121 East Fourth Street when the altercation happened. I'm not sure, it's been so long ago, when it was that it happened.

Q. So Ralph would have been there waiting for his two brothers to get home at this point?

A. Right, exactly.

Q. When this altercation occurred, were there a lot of children around at the time?

A. No.

Q. Were Gene and his wife or exwife dropping off, then, Jake and –

A. Jerrid.

Q. I'm going to have a problem with all these kids' names -- Jerrid from a skating party or something like that?

A. I think it might have been something

[p.23]

like that. I'm not really sure.

Q. Okay. And they were late that evening, right?

A. Honey, I don't remember, honestly. I'm getting old, and my memory's going with it.

Q. Okay. You just have to tell me what you remember, what you know. If you don't remember, you just let me know, and that's fine.

A. Okay.

Q. Are you currently employed?

A. No.

Q. When was the last employment that you had?

A. At La Comedia Dinner Theatre.

Q. And when did you work at La Comedia?

A. Last year.

Q. What did you do at La Comedia?

A. I was a server.

Q. And how long did you work there?

A. Lasted about two weeks, and I had to quit because the trays were too heavy. The weight of the trays was pulling my shoulders, and it hurt too bad to carry them.

Q. What kind of weight would be on the trays? Are we talking drinks?

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A. No. We would have to -- it's a buffet, so we would have to go around and collect people's empty plates, and then there were times when I could have anywhere from seven to twelve plates and also glasses and silverware on the trays.

Q. They didn't give you any kind of a cart or anything like that to collect trays and plates?

A. No, no. The theater's set up in stairsteps, so there's no way you could get carts around there.

Q. Oh. Could you guess about how much these trays that you would have to carry would weigh?

A. I would say --

MR. STATON: Objection. I don't want you guessing, but if you have an idea, you can tell her.

THE WITNESS: I'm not real sure. Actually, I'm not.

BY MS. JUSTICE:

Q. Okay. Would the plates and dishes you would have to carry still have food and drinks in them?

[p.25]

A. Yes, sometimes, what the customers didn't finish.

Q. Okay. Did you talk to your boss about being able to carry lighter trays or anything like that?

A. Yeah, and they said they needed the serving help, and that was basically what fell with the job, so I chose to leave. I just couldn't handle it.

Q. And were you employed before La Comedia?

A. Yes.

Q. Where were you employed before La Comedia?

A. I believe I worked at my mom's factory for the summer, a summer job.

Q. Was this in 1994 -- or, I mean, I'm sorry -- 2004?

A. Last year was 2004. Yeah, it was, as a matter of fact.

Q. And what factory is this?

A. Worthington Custom Plastics in Mason, Ohio.

Q. What kind of things did you do at Worthington?

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A. I ran one machine the whole summer, and what it was is it was making plastic moldings for the inside of a Yukon. It was like the inside, interior.

Q. A Yukon is a vehicle, a truck?

A. Yeah, yeah.

Q. Okay.

A. But the plastic molding would come out and I would have to shave the edge and then take a torch and run it around the edge and pop a thing in and then just hand it to the person behind me.

Q. Were you able to do that job okay?

A. Yes.

Q. So why did you only work there for the summer?

A. It was just a summer job, because I was still going to school then.

Q. Okay. At Miami University?

A. Yes.

Q. And you said it was your mom's factory. Is that where your mom works right now?

A. Yes. She's been there for fifteen

[p.27]

years.

Q. So it's not really her factory, it's just where she works?

A. Right, it's just where she works, yeah.

Q. And prior to working at Worthington, have you held any other employment?

A. Yes.

Q. And where would you have been employed?

A. Home Depot.

Q. When were you employed at Home Depot?

A. I think it was in '93 or -- now you have got me on the '90s, too -- 2003 through 2004.

Q. Okay. Was this like a part-time job while you were in school?

A. Yes.

Q. What did you do at Home Depot?

A. I was a cashier in the evenings.

Q. So how many hours a week were you going to school in 2003?

A. I was going full-time, thirteen credit hours, so I think I was going, what -- I

[p.28]

can't remember my schedule.

Q. That would be thirteen hours a week, wouldn't it?

A. Yeah, it comes out to be something like that, because it's like ten minutes over the class or twenty minutes under or something like that.

Q. Right. And at this point, were you driving to Oxford or --

A. Actually, in that semester I believe I was in Hamilton and Middletown.

Q. So you were going to class thirteen hours a week, approximately, and working at Home Depot in the evenings?

A. Yes.

Q. Who watched your kids during this time?

A. My husband and my mother.

Q. What does your husband do for a living?

A. We own a self-employment business.

Q. What kind of business is that?

A. It's a home improvement business installing windows, siding.

Q. Does he do this out of his house --

[p.29]

out of your house?

A. Yes.

Q. So where does Ralph keep his tools and things of that nature for work?

A. On his truck in the garage.

Q. Okay. There at the house?

A. Uh-hum.

Q. And he supplies -- he would pick up at the factory?

A. It would be from either the contractor or from a home builder's company.

Q. Okay. So really, his is a labor position. He would go out to the site and install the windows, correct?

A. Right, exactly.

Q. Okay. So when your husband wasn't working and your mother wasn't working in the factory, they would watch your children?

A. Yes.

Q. Okay. Did anyone else watch the kids while you were at school and work?

A. My husband's aunt.

Q. What's her name?

A. Betty Mackey.

Q. The two older boys are getting to

[p.30]

the age where they could watch the younger kids now. Do you ever let them do that?

A. Every now and then for an hour or so, not too much longer. Brothers are brothers.

Q. Your brother Nick, he was once involved with a woman named Sarah Kirby; is that correct?

A. Yes.

Q. Do you know how long that the two of them were in a relationship?

A. I think it might have been almost two years.

Q. I skipped around a bit. I guess I need to go back to where did you work before Home Depot?

A. Actually, I think I was off for a few years before that.

Q. Okay. Do you remember the last time you were employed before Home Depot?

A. Not exactly. I couldn't give you a year or date.

Q. Do you remember where you were employed?

A. Actually, I'm not sure which one was

[p.31]

my last job.

Q. Okay. Do you remember what kind of work you did?

A. Well, at one point I worked at O'Charley's and in an office for a computer business at the same time, and I think that was the last time I had -- the last two jobs I had before taking a couple years off.

Q. Okay. Since you were working at La Comedia, have you tried to find any other positions?

A. No.

Q. Are there any other positions that you would be interested in working?

A. No, not right now at the moment.

Q. And why is that?

A. I'm in between getting all the chaos straightened out and working on getting back in school.

Q. So you only have one year left?

A. About a year and a half, probably three semesters.

Q. What do you plan to do once you graduate?

A. I want to be an art teacher.

[p.32]

Q. Any particular school you'd like to teach?

A. I want to teach high school children.

Q. And you said that Nick and Sarah were involved for how many years? Two that you know of?

A. I think it was about two, I'm not really sure, but about two, I think.

Q. Okay. When they were in a relationship, how often would you see the two of them?

A. Oh, here and there, not really a whole lot.

Q. Do you know where Nick and Sarah lived at that time?

A. Actually, they lived with my mother when they first got together.

Q. You think this was 2000, 2001?

A. I'm not really sure.

Q. It's been a while ago, huh?

A. Yeah.

Q. Do you remember how long they lived with your mother?

A. No, not actually. It was probably

[p.33]

four to five months, and that's a guess.

Q. Okay. At some point, Sarah was pregnant with Nick's child. Do you remember where they were living at that time?

A. She actually got pregnant while they were living with my mother.

Q. Okay.

A. And then they moved out and got their own place.

Q. And Sarah and Nick had a son. His name is Tyler Combs; is that correct?

A. Yes.

Q. Does Tyler -- do you know Tyler's full name?

A. Tyler -- oh, you hit me too quick. What is my nephew's name? Tyler Nicholas. You hit me too quick with that one.

Q. Do you know what year Tyler was born? I won't ask you for the actual date.

A. It's September 25th, I do know that, and it would have been 2001, because he's just a little older than my daughter.

[p.34]

Q. Okay. When Nick and Sarah were still together, did you ever baby-sit Tyler?

A. Yes, every now and then.

Q. Do you remember why you would be baby-sitting Tyler?

A. Well, they would just drop him off to go to the movies or go to the store, or he would just come over to stay with the boys also. It wasn't necessarily baby-sitting when he would come over.

Q. Okay. Do you know why Nick and Sarah broke up?

A. Just indifferences.

Q. When Nick and Sarah were together, did you approve of the relationship?

A. My brother's a big boy, but me and Sarah had a few disagreements.

Q. What did you and Sarah have disagreements about?

A. I can't actually tell you everything we had disagreements about. Sometimes it was just her and my brother fighting and the way she would treat my brother or the way she would mistreat the baby.

Q. How would she mistreat your brother?

[p.35]

A. Just screaming at him, yelling at him, calling him names.

Q. Did she do this when she lived with your mother?

A. Yeah.

Q. And how did she treat Tyler?

A. She would pretty much push him off on my brother a lot as far as the taking care part, changing the diapers, things that most mothers usually do.

Q. Did Sarah have a job back then?

A. She worked at Burger King at some point, but I'm not sure when.

Q. Okay. Did Nick have a job back then?

A. Yes.

Q. Do you know where Nick worked?

A. Burger King.

Q. Do you know how long Nick worked at Burger King?

A. No. I have no clue.

Q. Did your mother, did she approve of Nick's relationship with Sarah?

A. Yeah. They -- my mom had a few disagreements, you know, just a mother's thing,

[p.36]

you know, with the way she would yell at Nick and scream at Nick and always push the baby off on Nick, but --

Q. Did you ever see Sarah hit or strike Nick?

A. No, actually, I didn't ever see her strike him or anything, I don't think.

Q. Did you ever hear of Sarah hitting or striking Nick?

A. Throwing things at him I heard, yeah, that kind of thing.

Q. What kind of things would she throw at him?

A. I'm not sure --

Q. Okay.

A. -- honestly.

Q. In your complaint against the City of Franklin and the police officers, you've claimed 1.5 million dollars in compensatory damages, so we're going to talk about that for a while. Is that okay?

A. Yes.

Q. We haven't actually seen medical bills. Do you have copies of your medical

[p.37]

bills?

A. Roger has some, and then I've tried -- I'm trying to get others. It's like a chase because the doctor I go to, another hospital handles the billing, and it's just going through a process of getting them.

Q. Okay. And these are medical bills from the period back until 2002, correct?

A. Yes.

Q. Do you have any idea what those medical bills total?

A. No. I have no clue.

Q. After August 16th, 2002, when did you first seek medical treatment?

A. Actually, August 17th I went to the hospital that morning in the a.m. hours.

Q. What hospital did you go to?

A. Me and Roger were just discussing this the other day. I'm in the process of trying to remember if it was Southview or Middletown. I believe it was Southview.

Q. I haven't seen any records from August 17th, 2002. Would you happen to have copies of those medical records?

[p.38]

A. No, no.

Q. When you went to the hospital that day, what injuries were you complaining of?

A. Shoulder pain and the bruises – bruises on my arm.

Q. Do you recall what doctor that you saw?

A. No.

Q. Was this an emergency room visit?

A. Yes.

Q. What kind of shoulder pain were you having?

A. Just continuous stabbing pains.

Q. Was there a particular area of your shoulders that you were having continuous, stabbing pain?

A. The upper shoulders (indicating).

Q. The upper shoulders, do you mean around the tops --

A. Around the cuffs, around here (indicating).

Q. Cuff of the shoulder?

A. Yes.

Q. On both shoulders?

A. Yes.

[p.39]

Q. Were you having pain in any other area of your shoulders?

A. Just around the cuff of the shoulders.

Q. And where exactly was the bruising on your arms?

A. It was under here (indicating).

Q. Underneath your biceps?

A. Yes.

Q. And was the bruising underneath both biceps or just one bicep, do you remember?

A. I don't remember.

Q. Did you take any pictures of the bruising of your bicep?

A. Yes.

Q. Do you still have those photos today?

A. Yes. Roger has them.

MS. JUSTICE: Roger, we'd like to make a Rule 34 request for copies of those photos.

MR. STATON: Yeah. I don't know if I have them. I'll look through my files and see if I have them all.

THE WITNESS: If you don't, you

[p.40]

might have given them back to me.

MR. STATON: I might, yeah. But we've agreed to produce them for you and for Ms. Ballato.

THE WITNESS: I think I did let you keep a copy.

MR. STATON: You might have. It's been so long.

THE WITNESS: Yeah, I know. I'm getting old and my memory's going with me, and I'm sitting here trying to remember all this.

BY MS. JUSTICE:

Q. What did the doctors do when you told them about the pain in your shoulders and the bruise on your bicep?

A. They x-rayed the shoulders, looked at the bruise. That morning, they only x-rayed the left shoulder.

Q. And do you know the results of those x-rays?

A. They said there was no breakage. Other than that, the emergency room can't tell you anything. They just looked for breakage.

Q. Okay. So since I'm assuming you still had pain after that, did you return to the

[p.41]

doctor for more tests or more examinations?

A. Yes. It was just a couple days later, I was sitting in the living room floor wrapping presents for my son's birthday because Cody's birthday, of course, is in August --

Q. Right.

A. -- and my right shoulder locked up on me and I had to call my family physician.

Q. And who is your family physician?

A. ~~Dr. Krisell~~ Fedrizzi. Would you like me to spell that?

Q. The court reporter would like for you to spell it.

A. K R I S E L L, Fedrizzi, F E D R I Z Z I.

Q. And what did Dr. Fedrizzi do?

A. She referred me to an orthopedic.

Q. And do you recall the name of the orthopedist?

A. Dr. Vitols.

Q. Do you know how to spell that?

A. V I T O L S.

Q. And what kind of examination or tests did Dr. Vitols do?

A. He looked at my shoulders, looked at

[p.42]

the x-rays from the hospital, and suggested cortisone shots.

Q. And did you see Dr. Vitols right after you went to see Dr. Fedrizzi?

A. I'm not exactly sure when it was. It was within a couple weeks, I'd say, but I'm not real sure because, of course, it takes a while to get in to an orthopedic.

Q. And did Dr. Fedrizzi just look at the x-rays that were done in the emergency room?

A. No. Actually, she felt my shoulder and put it through the whole thing, turning it this way, turning it that way, that the doctors do, and she asked, you

know, questions and then said, well, I think you need to see an orthopedic.

Q. Did Dr. Fedrizzi ever send you to have an MRI done?

A. Actually, I don't remember if she did. Actually, I don't remember if Dr. Fedrizzi did.

(Thereupon, Defendants' Exhibit A was marked for purposes of identification.)

BY MS. JUSTICE:

Q. If you want to take a look at this,

[p.43]

this is medical records that we got about an MRI that Dr. Fedrizzi had read (providing).

A. She did.

Q. That answers the question, right?

MR. STATON. Well, wait a minute, wait a minute, wait a minute. The question is whether Dr. Fedrizzi sent her for an MRI.

MS. JUSTICE: Sent her for an MRI.

MR. STATON: And I'm not sure that this says that she did as opposed to the orthopedic surgeon doing it. That's my question on this.

MS. JUSTICE: Dear Dr. Krisell D. Fedrizzi, thank you for the opportunity to evaluate this patient with a left shoulder --

THE WITNESS: If I may, every time I have something done, they send her copies.

MR. STATON: So that's my question. I'm not sure if she actually ordered it, if that's your question.

THE WITNESS: She may have. I just honestly don't remember because I had so much done. I do remember that the orthopedic sent me, but I didn't remember if Dr. Fedrizzi had or not.

BY MS. JUSTICE:

[p.44]

Q. And this is dated for August 27th, 2002; is that correct?

A. Yep.

Q. And do you think that you had seen the orthopedist before then?

A. Actually, you're probably right. I think Dr. Fedrizzi did send me, because it's Paragon Diagnostic.

Q. Is Paragon usually the one that does the diagnostics for her?

A. That she would have sent me to, but now they're closed down.

Q. Okay. And so do you remember Dr. Fedrizzi ever talking to you about the results of the MRI?

A. I remember her talking to me about what was going on with my shoulders and telling me that I need to see an orthopedic, but I don't remember discussing the MRI.

Q. Okay. Do you remember why she wanted you to see an orthopedist?

A. Just the shoulder pain.

Q. Did she give you any kind of diagnosis or any kind of particular thing that she wanted you to see the orthopedist for?

[p.45]

A. Actually, no, because she wouldn't, because she'll tell you she's not an orthopedic, so she won't diagnose something like that.

Q. Okay. And so do you remember what kind of examinations Dr. Vitols did other than suggesting cortisone shots?

A. He just gave me the basic examination where he stands me up, he moves my shoulders different ways. He felt my shoulder popping while moving it in the office and suggested the cortisone.

Q. Did he give you any idea what shoulder popping might mean?

A. Well, it could be several things.

Q. Is that what he said to you, that it could be several things?

A. Yeah, right. And he said we'll start with the cortisone and go from there and see if that helps.

Q. Okay. At any point did he give you a specific diagnosis of a disorder or something along those lines, a name for what was going on?

A. He said it could be related to an arthritis or a bursitis or it could be the

[p.46]

ligaments loosening up in the shoulder from being dislocated.

Q. Did anyone ever diagnose you with a dislocated shoulder?

A. No.

Q. Do you know what bursitis is?

A. Has something to do with arthritis. I'm not real sure. I have no clue.

Q. And so he suggested cortisone shots. Did you go ahead with cortisone shots?

A. Yes, I did.

Q. And did you go ahead with cortisone shots in 2002?

A. Yes.

Q. Who gave you the cortisone shots?

A. Dr. Vitols.

Q. Did he give you these shots directly into your shoulder? I'm not sure how that works, if you could give me some idea of how a cortisone shot --

A. It's very painful and it's directly into the shoulders.

Q. So they just take a needle and shoot

[p.47]

cortisone into your shoulders?

A. A very long needle, yes.

Q. Did he do this in both shoulders?

A. Yes.

Q. Do you have any records from Dr. Vitols and the treatment that he gave you?

A. No. I think Roger has a few bills maybe. No, I don't think we did get anything. I think I got one bill from Dr. Vitols, and I remember looking at it and thinking that it wasn't the full bill, but --

MS. JUSTICE: Roger, could we get copies -- do you want us to make a formal request for updated copies of the medical records that you have?

MR. STATON: No. I mean, I've given you what I have, I think, but LaDawnya's trying to get the records.

THE WITNESS: A lot of times I'll show him something and he'll hand it back to me.

BY MS. JUSTICE:

Q. Okay. Could you make sure that your attorney has copies of whatever bills and records that you have so that we can --

[p.48]

A. I'm in the process of trying to do that right now in between the other million things I have going on.

MR. STATON: You know, we can, Tabitha, and I suggested this to your office, get together even after the deposition and agree upon the medical authorization, just have both of us get copies of the same thing from all of her practitioners.

MS. JUSTICE: Right. And anytime we get copies of any medical records, we always submit the copies to you.

MR. STATON: Right. So I mean, we've been agreeable to that, and we're willing to cooperate in that respect, so --

MS. JUSTICE: Okay. That sounds great, because I'm having difficulty getting the records, but perhaps in a joint effort we can get them both together.

THE WITNESS: Well, I've signed releases, and I go in and they're like you have to sign a release. I'm like I signed one for you.

So I'm just going through, I guess, the ladders of the way you have to --

[p.49]

BY MS. JUSTICE:

Q. Right.

A. -- to get them.

Q. And so how often did he do these cortisone shots in your shoulders?

A. He told me they could last a month, three months, years. I think it was approximately maybe a month or two before I went back to hurting really bad.

Q. Okay.

A. They weren't really helping at all was what it come down to. The cortisone was not helping.

Q. Okay. So you got the cortisone shots the first time Dr. Vitols suggested them?

A. Yes.

Q. And then in a month or two, your shoulders began hurting again?

A. I don't even know if it was that long. Honestly, they didn't really -- they helped a little, but the pain never totally subsided.

Q. Right. So did you go back to Dr. Vitols?

[p.50]

A. I'm not sure, because at some point, I switched doctors.

Q. Switched orthopedists or family doctors?

A. Yes, orthopedists.

Q. Okay. Do you know who you switched to?

A. Cassano Health Clinic in Dayton, and it was Dr. Davis in orthopedics.

Q. Davis?

A. Davis.

Q. Okay. And do you remember when was the first time you had an examination with Dr. Davis?

A. No, I don't, honey. I have no clue.

Q. Was it in 2002?

A. I don't think so. I think it was 2003.

Q. Okay. And what did Dr. Davis -- how did he examine you, or did he have any tests done?

A. He did the same thing, the standing me up, the moving the shoulders in different positions. I also at one point -- Dr. Fedrizzi

[p.51]

did refer me to a therapist, a physical therapist that I was seeing in her office in Germantown, Julie -- oh, I forget her name. And then when I seen Dr. Davis, he did the cortisone shots again and sent me for an MRI on the left shoulder.

Q. Did you tell Dr. Davis that you didn't think the cortisone shots were helping?

A. Yes. He said, well, let's try them again and take it from here.

Q. And so Dr. Davis also sent you for an MRI on your left shoulder. Do you remember approximately when this occurred?

A. I can't remember dates. I really can't.

Q. Was this sometime in 2003?

A. Yeah.

Q. Do you think it was in the beginning of 2003 or --

A. I'm not sure. I'm really not sure.

Q. 2003 you were working at Home Depot, correct?

A. I worked -- I believe I worked at Home Depot from the end of 2002 until I think it

[p.52]

was like April, 2003.

Q. Okay.

A. So --

Q. So do you think that you saw Dr. Davis sometime in the period you were working at Home Depot?

A. I know I seen him sometime in that period that I was working there, but I'm not sure when.

Q. Okay. Okay. So you do believe it was probably sometime early in 2003, then?

A. Yes.

Q. Okay. So do you remember what Dr. Davis said the results of the MRI were?

A. They come back with the bursitis thing again.

Q. Did anyone ever mention to you tendonitis?

A. Honestly, I don't remember, honey.

Q. And what treatment, other than the cortisone shots, did Dr. Davis suggest?

A. That and the physical therapy.

Q. How often did you go to physical therapy?

A. I was scheduled to go three times a

[p.53]

week, and sometimes I didn't make it due to sometimes I don't make it to a lot of things that I need to do because I have five children.

Q. Right. Do you think that you began your physical therapy sometime in the beginning of 2003 or the end of 2002?

A. I -- that was referred by Dr. Fedrizzi, so that would have been probably in 2002 I would have started.

Q. And when you first started going there, were you actually going the three times a week that you were told to?

A. Yeah.

Q. Do you remember how many weeks, approximately, you were able to go the three times a week?

A. It was probably three to four weeks.

Q. What kind of things would they do in physical therapy?

A. She would do heat pads, laying me flat on my back and exercising the shoulder. She would actually exercise the shoulder. They would stick a rubber piece in a door and have me stretch the rubber piece with the shoulder. She would have me lean against the

[p.54]

wall and push out with my forearms, putting pressure on the shoulders. I think that's about it.

Q. Did any doctor recommend you use heat pads or anything like that when you were at home?

A. No. The physical therapist told me to. She gave me the actual thing you stuck in the door and stretched, and she showed me the exercise where you would press against the wall, press the forearm against the wall and press against the shoulder and like do it ten times on each arm, that kind of thing, at home.

Q. Okay. I'll represent to you that the limited bit that I know about bursitis is that it's an inflammation of the shoulders. I don't know that much about it, but I think that it's caused by trauma or repetitive motion. So the trauma that occurred on August 16th is what you claim has caused this injury, correct?

A. Yes, ma'am.

Q. Even though they had, I guess, tentatively diagnosed you with bursitis, did they explain to you why they wanted you to do

[p.55]

exercises with your shoulders?

A. So I could get -- the therapy is actually to try to get the motion back in the shoulders that I lost during the injury.

Q. Okay. Okay. Do you remember back in 2002 how far you could lift your shoulder, your arm up, that kind of thing?

A. I could get it almost to shoulder height.

MR. STATON: We're talking about during the therapy?

MS. JUSTICE: Right, in 2002.

MR. STATON: After August 16th?

MS. JUSTICE: Right, right.

THE WITNESS: Okay.

BY MS. JUSTICE:

Q. So right after this occurred August 16th, you could lift it about shoulder height?

A. Right.

Q. Okay.

MR. STATON: Thank you.

BY MS. JUSTICE:

Q. And could you rotate your arm at all?

[p.56]

A. At some times, some points, just the way I moved it, no, and sometimes yes. It was depending on what I was doing and how I was rotating it.

Q. When you said it locked up, that was in August, 2002, correct?

A. Yeah. That was during the next like three or four days after the incident, my right shoulder, actually. I was sitting on the floor wrapping my son's birthday presents and my shoulder just completely locked up. I mean, I couldn't move it at all, and this really bad pain just shot down my arm and down my chest.

Q. So your arm was like stuck by your side?

A. Yeah. I -- for several, several minutes. I mean, and it took me like two or three days to just barely get any motion back in it.

Q. Right. When it was locked up, where did it hurt you? Did it hurt you in the cuffs of your shoulders still?

A. Oh, it hurt like real majorly right here (indicating) and just felt like something in

[p.57]

there just locked.

Q. Okay. But you were able to get it to move on your own after a few minutes?

A. Well, actually, that was within the next couple days is when I seen Dr. Fedrizzi and then she started me in the therapy with Julie and we started that. That was the reason, to get the motion back in my shoulders.

Q. Okay. I see. So you went to see Julie three times a week for about a month and then were you still supposed to see Julie after that month for therapy?

A. Well, we -- we come to the conclusion that I needed to talk to the orthopedist, that maybe the therapy wasn't working at that point.

Q. Okay.

A. Somewhere within four to six weeks, I think it was, they came to -- Dr. Fedrizzi and Julie come to the conclusion that the orthopedist needed to handle it because it didn't seem like the therapy was helping or working.

Q. Okay. And so you went to see Dr. Vitols, right?

A. Yeah. I seen Dr. Vitols in the time

[p.58]

that I was doing the therapy.

Q. Right. And why did you think that the therapy wasn't working? Were you still having the same pain?

A. I still had the pain, still had the popping in the shoulder.

Q. Okay. So you went to see Dr. Vitols. You saw him, he gave you cortisone shots, then you went to see Dr. Davis. You saw him, he gave you cortisone shots, sent you for an MRI. Was there any more physical therapy
in there?

A. Dr. Davis had ordered it, and I never got to set it up and get down there. Me and the therapist played phone tag for a while up at -- I think it was ordered at Southview actually, and I just never got to schedule it to get in because of my school schedule at that time and everything that was going on, it was just really hard for me to schedule other things in there.

Q. And Dr. Davis is also at Cassano Health, do you know?

A. Cassano Health Clinic. It's on

[p.59]

Edwin C. Moses Boulevard in Dayton.

Q. So he ordered therapy but you were just really busy and couldn't go there?

A. (Nodding head up and down.)

Q. Was there anything else that Dr. Davis suggested?

A. After I had the MRI, I went back in for an MRI reading and he gave me cortisone shots again.

Q. Was this the third time you had them?

A. The third time, yes.

Q. Okay. And did you tell him at that point that you didn't think cortisone shots were helping you?

A. Yes, and they were still arguing with me to keep trying them.

Q. And so after this third time you received cortisone shots, did your shoulder begin to feel better at all?

A. No.

Q. So what did you do after that?

A. Actually, I haven't seen an orthopedic since I think it was July of last year, or it may have been June.

[p.60]

Q. June or July of 2004?

A. Yes.

Q. Do you know, was this Dr. Davis?

A. Yes.

Q. What did Dr. Davis tell you this time?

A. Honey, I -- that was when I went back and got the last set of cortisone shots, and they just were telling me the same thing, it's bursitis, and if you keep having problems, call us back, make another appointment.

Q. Okay. So this June or July of 2004, was this your third set of cortisone shots or was this another set?

A. I think that was my -- I'm not even sure if I got cortisone shots on my last visit. I think my third set might have been before that last visit.

Q. Okay.

A. And I went in to talk to him on the last visit and I think he gave me some pain medication and discussed it with me and told me if I continued having problems, to call him back in a month, and then I hit a lot of bumps in the road for the next eight months.

[p.61]

Q. Right. So the third time you had cortisone shots, you think you had those sometime in 2003 or early 2004?

A. Honey, I'm not sure, I'm really not, with all the dates.

Q. Has any doctor suggested any kind of surgery for your shoulders?

A. Dr. Davis had mentioned that would be an option if it got bad to the point where nothing was helping. He didn't -- he wanted that to be a last-minute option, and I also did, too, because I've experienced that, and it's not a very nice thing.

Q. But in June or July of 2004, didn't you say that there wasn't anything that seemed to be helping your shoulders?

A. Yes.

Q. What kind of pain were you still having in June or July of 2004?

A. Still the popping in the shoulders, the aching, the limited motion. When I sleep at night, I like to sleep on my side, and I can't sleep on either side because of the pain at night in the shoulders so I have to compromise by

[p.62]

sleeping on my back or my stomach, as much as I hate it.

Q. Did any of these doctors give you any kind of pain medication for your shoulders?

A. Dr. Davis actually did.

Q. What kind of pain medication did Dr. Davis give you?

A. I can't remember if he gave me Darvocets or Vicodins.

Q. Was this the first -- back when you first saw Dr. Davis that he gave you pain medication?

A. I don't think he did when I first saw him. I think it was the later visitation when he gave me the pain medication. The first time I visited, I believe he gave me the cortisone.

Q. And how long did he have you on Vicodin or Darvocet?

A. I think I only got a script from him like one time.

Q. So maybe a month, two months?

A. I think it was like a month worth, you know, thirty days.

Q. When your pain medication ran out,

[p.63]

did you contact Dr. Davis to let him know you were still in pain?

A. No.

Q. What kind of things do you do yourself to help take care of the pain? Do you take like aspirin?

A. I take Extra Strength Tylenol and then I have Vicodin from Dr. Fedrizzi that I take for female problems, and every now and then I'll take them for my shoulders. I'm just not much of a pill person. I don't like swallowing pills.

Q. Do you ever try to use any kind of heating pad or anything like that on your shoulder?

A. Actually, I have, yes, a -- it's – it's a massager with a heat unit on it, and I'll use the heat off of it a lot of times.

Q. Okay. Because I'm a little surprised that the doctors didn't suggest that since from what I've learned of bursitis --

A. Julie did that, she did that in therapy, but the doctors never said anything about it.

Q. Okay. Your physical therapy with

[p.64]

Julie, was that at Southview?

A. No. Hers was at an office -- it was in the back office of Dr. Fedrizzi's office in Germantown. The one at Southview is the one I never got around to getting scheduled.

Q. Oh, okay. The medical records provided by your attorney indicate that you actually did go four times to Southview for physical therapy and didn't go five times. Do you remember going to any times at Southview?

A. Are you sure the billing isn't just done through Southview for Julie?

Q. Well, this isn't billing. This appears to just be written notes.

A. I know that's Julie's paperwork. I can see it.

Q. Yeah. It has her -- Dr. Fedrizzi here. So this is from Julie, but this was actually done --

A. Right. It's not done at Southview. It's done in the back office of Dr. Fedrizzi's office, and I think she works for Southview is

[p.65]

what it is.

Q. Okay.

A. And so that's how you are getting the Southview thing.

Q. Yeah. See, I'm getting Southview from the top of the paper (indicating). A. Yeah, but I think she actually works through Southview Hospital and she just has her office in the back of Dr. Fedrizzi's old office.

Q. I see. So you just saw Julie, you didn't --

A. Right. I didn't see the other therapist at Southview.

Q. Okay. That makes sense. And you indicated that you once had surgery on your shoulder. Do you remember when that was?

A. Jake was born in March. In April of 1994, I had shoulder surgery. I'll never forget taking care of a baby with one arm.

Q. Oh, my gosh. And which shoulder did you have surgery on?

A. Left.

Q. What happened to your left shoulder

[p.66]

that you needed to have arthroscopic surgery?

A. I fell through some steps and my shoulder was dislocated totally, and for the next two years, every time I would move it to a certain point, it would dislocate on its own and then I would have to pop it

back in place. Yeah, just like the Mel Gibson thing you see on Lethal Weapon, the same exact thing.

Q. Oh, my gosh. So you said in April, 1994, you had the surgery?

A. Yes.

Q. When did you fall through the steps?

A. I think it was in '92 or '93. I'm not real sure. It was within a year and a half or two years after that I had the surgery, because I had went through the year and a half, two years of having the dislocation and the problems, and finally Dr. Vitols said, okay, let's get in here and fix something.

Q. Okay. So you saw Dr. Vitols back then, too?

A. Yes.

Q. Okay.

A. He did my surgery back then.

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Q. How many times from 1992 to 1994 did you have it dislocate?

A. I could not possibly tell you that because it happened often. Like there was an instance where I was in NAPA Auto Parts to pick my son up and went to throw him over my shoulder. My shoulder

dislocated, and he went on over my shoulder and fell on the floor.

Q. Oh, my gosh.

A. There was a time when I was crawling across the bed, missed the bed, and my hand slipped, and when it did, my shoulder dislocated and I laid on the floor for twenty-five minutes trying to get my shoulder back into place. It happened often.

Q. How would you get your shoulder back into place?

A. I would just have to lay in pain and my whole arm numb until I could just move and it would finally just put itself back in.

Q. So you didn't have to like slam it into place like Mel Gibson did in that movie?

A. No, no. I couldn't see myself slamming my shoulder into something. I like – like the time on the bed, I laid on the floor for

[p.68]

twenty minutes in excruciating pain with my whole arm numb until I just kind of fidgeted around on the floor and it would just put itself in, pop back in.

Q. What kind of treatment did the doctors give you for this injury before they decided to give you surgery?

A. They tried therapy, pain medication, and then we went to surgery.

Q. Did they do cortisone shots?

A. No, no.

Q. And after your surgery -- do you have like a scar from your surgery or anything like that?

A. Actually, it's three small scars, because at that time, they had the laser -- I want to say laparoscopy, but that's a female operation. It's -- it was the laser surgery.

Q. Okay. So did they actually have to cut open your shoulder or --

A. No. There's three small incisions, one here, one here, and one on my back (indicating).

Q. And what kind of thing -- did they tell you what they needed to do in there when

[p.69]

they went in there?

A. I actually -- everything in there was so loose, my ligaments and tendons, that when I would move my shoulder, it would just come out of the cuff because there was nothing holding it in because everything was so loose in there.

Q. So they just went in there and tightened things up?

A. Yeah. Pretty much sewed it, stapled it, whatever you want to say they did.

Q. Okay. What kind of remnants of this surgery did you have? Did you have pain in 1994 after you had the surgery?

A. Actually, my arm was strapped to my stomach for six weeks before I could even move it, and I drove a stick truck with one arm.

Q. I can imagine the boys in the back screaming and --

A. Uh-hum.

Q. When do you think that you were completely healed or if you ever were completely healed?

A. It took me a year and then -- it took me a year of going through therapy and getting the full motion of my arm back, and then

[p.70]

after that, within the next year, year and a half, I -- my shoulder went back to where I could use it just as well as I did before the injury.

Q. So in about 1995 you felt back to normal?

A. Probably somewhere in there, between '95 and '96.

Q. So after you had your surgery, you didn't have any kind of a popping or pain in your right shoulder?

A. After I got over the surgery pain, because it was supposed to be an outpatient surgery, and I actually spent three days in the hospital. It was pretty painful. So after I got over the pain from the surgery and got through the physical therapy, yeah, once I got full use of it back, I was back to normal.

Q. Okay.

A. It did pretty well.

Q. Did you have to have any kind of follow-up treatment or therapy of any kind?

A. No, no.

Q. Now, when you say that you were in the hospital for three days, was that because of

[p.71]

complications of the surgery or just the pain?

A. It just turned out to be more painful than what they had planned.

Q. Okay. So did they put you on morphine or something like that?

A. Yeah. My mom said I talked about chickens. I was on a morphine machine for three days.

Q. Do you remember if they had to put you on an IV as well in addition to the morphine drip?

A. Yeah.

Q. So you were really out of it for those three days?

A. Yeah. I don't even remember my family visiting.

Q. So this is why you don't want to have to go through this kind of a surgery again?

A. Exactly. It's very painful.

Q. Since the surgery seemed to fix you up from the first time, though, do you think that it would be a good idea to just put up with three days in the hospital, if necessary, to make it go back to normal?

A. No, because it wasn't just that

[p.72]

three days of pain. There was also excruciating pain after I got home.

Q. Right.

A. I am trying to avoid surgery because I have five children --

Q. Right.

A. -- and I don't have the time to spend in the hospital and because it is excruciatingly painful.

Q. Okay. In your complaint, you have also indicated that you lost income as a result of the August 16th, 2002 incident. Could you list for us the income that you say or allege that you have lost?

A. You know, honey, I can sit here and tell you honestly I don't even remember where I was working.

Q. In 2002?

A. Yeah.

Q. In 2002, I think you told us that you were off work at that point.

A. Was that Home Depot?

Q. You started at the end of 2002 through the beginning of 2003.

A. Was it at Home Depot?

[p.73]

Q. Right.

THE WITNESS: I'm not sure, Roger. I'm really not sure.

MR. STATON: Well, just say you are not sure, then.

THE WITNESS: I'm not sure. I'm really not sure.

BY MS. JUSTICE:

Q. So you may or may not have been working at Home Depot at the time of this incident?

A. I'm pretty sure I was working.

Q. Do you remember what you were making at Home Depot?

A. I was making eight fifty an hour.

Q. And you said you were working the evenings. Do you know how many hours you were working in the evening?

A. It depended on the day. On Sundays I could work 1:00 to 9:00. In the evenings during the week, I could work 4:00 to 9:00 or 2:00 to 10:00. It worked around my school schedule also, so it just depended.

[p.74]

Q. Okay. Do you think that you were working full-time hours, like forty hours a week at this point?

A. Actually, no.

Q. Because you were going to school at that time, right?

A. Right, yes.

Q. Did you have any kind of benefits, health insurance or dental insurance or retirement or anything like that?

A. Not yet.

Q. Do you know at what point you would start getting benefits working at Home Depot?

A. I'm not sure.

Q. Okay. Is there anything else other than the time that you lost at -- do you have any kind of records like a W-2 or income taxes from the time you worked at Home Depot?

A. Uh-hum.

Q. Could you provide your attorney with those so that we could get copies of those so we know what kind of income you lost?

A. Yeah.

MR. STATON: If you have them.

THE WITNESS: Yeah.

[p.75]

BY MS. JUSTICE:

Q. Okay. Great.

A. I own my own business, so I keep that kind of stuff.

Q. Okay. Good. Other than your lost income with Home Depot, is there any other type of benefits or income that you believe you lost as a result of the August 16th incident?

A. I'm not really sure. I don't know.

MR. STATON: Well, you have told us about La Comedia. Any other jobs that you were not able to do?

MS. JUSTICE: Right.

THE WITNESS: Just -- I just -- can I not answer that right now at this moment? I just --

BY MS. JUSTICE:

Q. Well, we kind of need you to --

A. I'm not sure exactly what you are asking. Can you explain it to me?

Q. Okay. You lost income -- we understand that you have had certain positions.

[p.76]

You believe La Comedia, you had to leave there because of your shoulder injury. So that is -- what kind of salary were you making at La Comedia, for instance?

A. La Comedia, it would have been a server salary plus tips, so it would depend.

Q. Could you give us some idea of what your average weekly salary was for those two weeks you worked there?

A. Well, actually, I was in training, so I was making minimum wage in the training period.

Q. Did you have some idea of what the other servers made a week, the ones who were not in training anymore?

A. No. You could never be sure. I mean, it just depended on how the show sold, how many tickets you might have sold that night, what section you would be in, the weather. Serving positions always depend on different things.

Q. And you said that you actually left your employment at Worthington because it was a summer position.

A. Exactly.

[p.77]

Q. So you didn't leave that because of any shoulder pain?

A. No. The pain is always there, but I mean, that job was pretty simple. It didn't require any movement or a lot of above my head stuff or anything like that.

Q. And you also told us earlier that you didn't actually want to work right now because of all the chaos going on in your life and --

A. Well, no. I have some situations I'm straightening out from the chaos, and the school thing.

Q. And you want to go to school?

A. Yeah.

Q. Did you have to pay for any kind of child care while you were going to doctors' appointments, physical therapy, that kind of thing?

A. No.

Q. Were your husband and mother able to take care of the kids during that time?

A. Actually, my husband's aunt. That would be during the day when my mother and my husband was working.

[p.78]

Q. So your husband's aunt -- what was her name again?

A. Betty.

Q. -- Betty, does she take care of the kids for free?

A. Basically when I go to doctors' appointments and stuff, yeah. Yeah.

Q. Okay.

A. It's my mother-in-law's sister, so yeah.

Q. She enjoys --

A. She enjoys the kids, because her kids are grown.

Q. Are you currently on any kind of medication as a result of your shoulder injury?

A. Not at this time.

Q. Are you on medication for any other disorder or disease at this time?

A. No. Actually, I'm on the Vicodin for the -- I need a laparoscopy. My doctor thinks I have endometriosis, and I haven't been able to schedule that, so she gives me the Vicodins every now and then.

Q. Right.

[p.79]

A. And I have just been prescribed two months ago Lexapro.

Q. And what is Lexapro?

A. Lexapro is for anxiety.

Q. And are you currently taking this Lexapro?

A. Actually, no. I haven't took it in two weeks, and my doctor is going to kill me.

Q. Does Lexapro have negative side effects that you don't like?

A. Yes. It makes me groggy, sleepy. It's hard to take care of five children when you can't function.

Q. Had you ever been prescribed any other medication for your anxiety?

A. Yes.

Q. What medication?

A. Effexor.

(Thereupon, an off-the-record discussion was had.)

BY MS. JUSTICE:

Q. And Effexor was for your anxiety. Is anxiety a diagnosed disorder that you have?

A. Well, my doctor kind of -- I guess

[p.80]

you could say she kind of in between diagnosed me with depression and anxiety, and she said it's not the normal everyday what you hear, you know, where people have attacks and panic attacks with anxiety. It's more of I have, you know, a hundred things going

on in my head that I need to do and I'm trying to function and get everything done and I'm just not moving fast enough, and I just get spells where I just go into the bedroom and just sit and cry.

Q. It just all becomes too much for you sometimes?

A. Just give me ten minutes to cry and then I'll get up and go again kind of thing.

Q. So Dr. -- how do you say her name again?

A. Fedrizzi.

Q. She's the one that prescribed you the Effexor and the Lexapro?

A. Yes. Yes, ma'am.

Q. Did she prescribe you any other medication for your depression or your anxiety?

A. I'm not sure.

Q. How long were you on Effexor?

[p.81]

A. Not very long. I didn't like it.

Q. What kind of bad side effects would Effexor have?

A. Made me dizzy, loopy, and the tiresomeness, too, with the Effexor.

Q. Did she prescribe you any other medication for illnesses related to your depression and your anxiety or anything like that?

A. I've been on medication off and on for -- so I can't -- I don't really remember, you know, if there's been any other.

Q. Have you ever been prescribed anything for bipolar disorder or manic-depressive disorder?

A. No, ma'am.

Q. And you're not on anything today, as you're testifying today, then?

A. No, ma'am.

Q. Okay. Do you know if the Lexapro or Effexor or the Vicodin or any of these would have had any effect on your memory or your ability to recall the events that occurred on August 16th, 2002?

A. I wasn't on anything at that time,

[p.82]

so no.

Q. Do you think that any of these medications have since affected your memory of those events?

A. I don't know that the medication has. I think it's more of I'm just getting older and forgetful.

Q. Time? And you weren't on any medication on August 16th, 2002?

A. No.

Q. How severe would you say your depression is?

A. At one point, it was pretty severe.

Q. In 2003 did you try to commit suicide?

A. I don't remember what year it was. I know it was in May.

Q. The years sort of run together, don't they?

A. It might have been two thousand -- I think it was 2003. May of 2003, I'm pretty sure.

Q. And do you know what led you to want to harm yourself? Just all the --

A. A lot of events that have happened

[p.83]

in my life within the last year.

Q. Okay. You said that you have been having chaos in the last year, too, in 2004, right?

A. It's more of not really chaos, just a lot of events, my husband's father passing, giving up the house to move in with my mother-in-law, my mother-in-law's house burning down in the time we lived there,

spending Thanksgiving at a Holiday Inn with my children and then finding -- finally getting lucky enough to get a home right before Christmas.

Q. Oh, my gosh. This was all in 2004, right?

A. Yeah.

Q. Wow. In 2003 what kind of things were you dealing with then?

A. I don't know that I really want to answer that.

Q. Okay. Did you -- was your attempted suicide related to this August 16th, 2002 incident?

A. It might have helped to add to the depression, I mean, as far as it didn't help.

Q. What was it that you think that led

[p.84]

to your depression?

A. You mean the -- could you rephrase that? You said it led to my depression?

Q. Right. In what ways did the August 16th, 2002 incident have anything to do with the depression that led you to attempt to kill yourself?

A. Because over top of the other things that I had going on that were depressing me, the court issues and the having to be in court and the charges were filed. I

mean, afraid of the charges and the things that were coming out of the event from August 16th.

Q. Do you remember when the charges were dismissed against you?

A. Actually, no, because it was because of a time thing, I guess.

Q. Right. You don't remember when that happened?

A. No, I don't recall the exact date.

Q. Do you remember about how many court hearings you had to attend between August 16th, 2002 and the time that you attempted to kill yourself?

[p.85]

A. No.

Q. How did you try to commit suicide?

MR. STATON: Objection. You may answer.

THE WITNESS: I ate sleeping pills.

BY MS. JUSTICE:

Q. Had you had any prior suicide attempts?

A. No, ma'am. At some point in the next five, can we take a break?

MR. STATON: Yeah. Are you at a stopping point?

MS. JUSTICE: Just so I get off of this topic. I just want to make sure we finish this topic.

MR. STATON: I'm glad you asked.

BY MS. JUSTICE:

Q. After you attempted suicide in 2003, did your doctor recommend psychological therapy or anything like that?

A. Yes.

Q. Did you attend therapy?

A. No, because Warren County Mental Health, I went and filled the paperwork out, and

[p.86]

they said they would call me with an appointment. They never called me with an appointment. I called them back two other times. They were supposed to call me with the appointment. They never called back.

Q. Do you remember telling the doctors that you attempted suicide because you felt useless and overstressed and because you had five children and were going to school?

A. I just -- I -- I don't remember too much about that week.

Q. Okay.

A. When they put you in those places, they put you on stuff that you are even lucky to be walking.

Q. Okay. Because you have indicated that the incident on August 16th, 2002 may have contributed to your attempted suicide, I just want to enter this statement dictated by Dr. Patwa Vinod about your -- that concerns your attempted suicide. I'm going to have her mark it and then I'll give it to you to review.

A. Okay.

Q. This is the only copy I have. I

[p.87]

apologize.

MR. STATON: Where did you get that, by the way? Did you get that directly from the doctor?

MS. JUSTICE: I believe that we did.

MR. STATON: Because I'm seeing – and I just want to state in the record that Ms. Ballato has indicated that we have not been cooperative in providing medical records, but what I'm seeing here, Tabitha, is apparently you do have substantial medical records in your file. So that may become a real issue.

MS. JUSTICE: Right. And the extent of our medical records are those that we were able to receive prior to you sending out your letter to the doctors.

MR. STATON: Oh, so excuse me for interrupting, but you got those without a –

THE WITNESS: You got those without my permission?

MR. STATON: -- you got those without a medical release, a HIPPA form release, or any type of release from LaDawnya Carpenter; is that what you are saying?

[p.88]

MS. JUSTICE: Through subpoena.

MR. STATON: Without a medical release?

MS. JUSTICE: Correct.

MR. STATON: And the doctors released those to you?

MS. JUSTICE: Prior to your letter.

MR. STATON: Uh-hum. Okay. That's very interesting. Thank you.

MS. JUSTICE: And I believe we sent a copy of all of this to you.

THE WITNESS: That's upsetting.

MR. STATON: No, you haven't sent copies of any of that to me, and I'm going to state that in the record, that I've not received any of the medical records

that your office has obtained without a medical release from Miss Carpenter.

THE WITNESS: I need a break.

(Thereupon, Defendants' Exhibit B was marked for purposes of identification.)

BY MS. JUSTICE:

Q. That's what I was going to say, I'll give this to you and you can -- you want to review this on your break (providing)?

[p.89]

A. Yes, please.

(Recess taken.)

(Thereupon, Defendants' Exhibits C-1 through C-7 were marked for purposes of identification.)

MS. JUSTICE: For the record, we want to enter Exhibits C-1 through C-7. These are -- C-1 is a letter sent by Mr. Staton to all the medical providers, and the others are the subpoenas that we entered to get the medical records. Most medical records were not provided to us because of Mr. Staton's letter, so we just wanted to enter that for the record.

THE WITNESS: Yeah. I don't remember signing any release except for him.

MS. JUSTICE: Again, for the record, we did submit medical authorization releases to Mr. Staton, but they were never signed and provided to us.

MR. STATON: For the record, we did contact Miss Ballato's office and indicate to them we filed copies of those letters, that we were willing to work out the terms of a medical release that was agreeable to both sides, but we

[p.90]

never got a response to that.

BY MS. JUSTICE:

Q. So going to the topic of August 16th, 2002, was your brother Nick living with you at that time?

A. No.

Q. Do you know where Nick was living?

A. He was living at Beam Apartments on Beam Drive in Franklin. I think now they're called the Crown Apartments or something.

Q. When this incident occurred, were you actually at Nick's house, then, at Nick's apartment?

A. Yes, I was.

Q. So the two of you weren't living together and you taking care of the kids or anything?

A. No.

Q. And were all five of your children present at Nick's apartment that day as well?

A. The three younger ones were. Actually, the four younger. I'm sorry. I forgot the baby.

Q. Okay. So Jake, Ralph --

A. Cody.

[p.91]

Q. -- Cody and --

A. Aleeanna.

Q. -- Aleeanna. Okay. Jerrid wasn't there?

A. No.

Q. That would have been easier probably. And little Tyler Combs was there as well, right?

A. Yes.

Q. Did Nick have a current girlfriend at that point that was present?

A. Yes.

Q. And was she actually at the apartment that day?

A. Yes.

Q. What was her name?

A. I can't remember. We were trying to remember this the other day.

THE WITNESS: What's her name?

MR. STATON: Joy Palmer.

THE WITNESS: Joy Palmer.

BY MS. JUSTICE:

Q. So Joy and Nick were dating?

A. Yes.

[p.92]

Q. Did Nick know Joy from his workplace?

A. Yes.

Q. Where was he working at that time?

A. Burger King.

Q. I seem to recall that Joy was a manager or something like that at Burger King.

A. (Shaking head from side to side.)

Q. She wasn't a manager?

A. No.

Q. Okay. And so you just took the boys over there, you were just sort of hanging out, that kind of thing?

A. The boys were swimming.

Q. Okay. Did Nick's apartment have a swimming pool?

A. Yes. Actually, I don't believe -- I think the boys were already there and me and the baby come over to get the boys.

Q. Okay. So Nick and Joy were watching the boys?

A. Actually, they were -- my mom lived with my brother again at that time, so they were staying with Nanny.

Q. Did your mom live in the same

[p.93]

apartment complex with Nick?

A. In the same apartment, yes.

Q. Okay. So it was Nick, Tyler, his mother -- was this your mother's apartment?

A. No. Actually, it was Nick's, and then when him and Sarah split up, my mom come to stay with him for day-care reasons.

Q. Okay. To take care of Tyler?

A. Yes.

Q. Okay. Did your mom maintain another apartment somewhere else or another household?

A. No. She lived with me before she moved in with my brother.

Q. Okay. So the boys were over there staying with your mom and swimming and that kind of thing on August 16th?

A. Yes.

Q. Okay. Then August 16th was, what, Sunday? No, Friday. It was a Friday, correct?

A. It was a Friday.

Q. Okay. So that evening you and the baby had gone over to pick up the boys from Nick's apartment?

[p.94]

A. Yes.

Q. Okay. What did you drive back then?

A. A 1984 Ford Econoline van.

Q. White?

A. Yes.

Q. Okay. Back in August, 2002, were you aware that Nick had entered into a civil custody protection order with Sarah Kirby?

A. Yes.

Q. Do you remember when he entered into that protection order?

A. It was sometime in July, I believe, because I took him to file for the protection order.

Q. Okay. So Nick was actually the one that filed for the protection order?

A. Yes.

Q. Were you aware that the protection order required Nick to turn over Tyler to Sarah at 6:00 on Friday at the police department?

MR. STATON: Objection. Objection. You may answer if you know.

THE WITNESS: Yes.

BY MS. JUSTICE:

Q. And August 16th was a Friday,

[p.95]

correct?

A. Yes.

Q. Did Nick take Tyler to the police department on August 16th, 2002?

A. No, he did not.

Q. So you would agree at this point, Nick had violated the protection order?

MR. STATON: Objection. It calls for a legal conclusion, and I -- if you want to give a legal conclusion, I guess you can, but I'm going to object for the record.

MS. JUSTICE: Okay.

MR. STATON: You want to answer the question?

THE WITNESS: No.

MR. STATON: Can you answer the question?

THE WITNESS: I have no clue. I mean, like he said, I'm not a legal adviser.

BY MS. JUSTICE:

Q. Right. Well, you did indicate earlier that you understood that the protection order required Nick to take the baby to the police department, correct?

A. I didn't actually read it, but I

[p.96]

knew that he was supposed to take Tyler to the police department on Fridays, yes.

Q. Okay. So you didn't know why, you just knew that he had to?

A. I knew that was the visitation agreement and the temporary custody order.

Q. Okay. Do you know, what time did you arrive at Nick's apartment on August 16th?

A. I believe it was shortly before 6:00.

Q. At that point, did you ask Nick, hey, why aren't you taking Tyler down to the police department?

A. No, I did not.

Q. And why didn't you ask him why he wasn't taking Tyler to the police department?

A. Because I already knew the reason.

Q. And what was that reason?

A. Because the week before, he had been brought home with cigarette burns and bruises on him.

Q. So the previous Friday, Nick had dropped Tyler off at the police department?

A. I'm not sure if it was the previous Friday or the Friday before. I don't remember if

[p.97]

there was like a week or two in between finding the bruises and the cigarette burns that he didn't see her before the incident on the 16th.

Q. Okay. So you don't know if Nick took Tyler to the police department on August 9th?

A. I'm not sure.

Q. Okay. But at some point, a week before or the week before that, you found -- Nick found cigarette burns and bruises on Tyler?

A. On the last visit with Sarah Kirby, yes, he come home with a cigarette burn under his elbow (indicating) and bruising.

Q. Where was the bruising?

A. Honestly, I don't recall exactly.

Q. Did you see the cigarette burns and bruising?

A. Yes.

Q. Did you take any photos of the cigarette burns and bruising?

A. Yes.

Q. Do you have copies of those photos today?

A. Yeah, somewhere.

Q. Could you provide copies of those

[p.98]

photos to your attorney so that we could get copies of those?

A. I'm not real sure if I gave them to my brother. I'm not real sure, and I'm not real sure that I would be able to provide them.

Q. Okay.

MR. STATON: Well, I can tell you that in the court record in the custody matter in Juvenile Court here in Warren County, copies of those photographs were introduced as exhibits, so they're at least there in the Juvenile Court record, and I may have a copy also, and if I do, I'll give you a copy, but we introduced them as an exhibit.

THE WITNESS: Yeah. I just think most of those pictures I gave to my brother, and I don't know if I would have them.

BY MS. JUSTICE:

Q. Okay. So you knew that Nick had decided not to let Sarah see Tyler anymore at this point, correct?

A. Yes.

Q. Okay. At some point, did you contact the Franklin PD about the cigarette burns and bruises?

[p.99]

A. I don't recall.

Q. Do you know if Nick -- do you remember if Nick called them or --

A. I know there was an incident where my brother contacted Officer Bowling about bruising on Tyler's face, but I don't know if that was the same incident or not.

Q. Do you know whether or not Nick contacted Children's Services about the cigarette burns and bruises?

A. I believe he did.

Q. And from what you said earlier about Tyler wanting to spend time with the boys and that, I take it that you are a pretty close family, you, your brother, the boys, and Tyler, correct?

A. And my mother, yes.

Q. And now the baby?

A. Uh-hum, Aleeanna.

Q. Aleeanna. I'll get that one down.

A. That's a hard one.

Q. How often would you say that you spent time at Nick's apartment or the boys spent time at Nick's apartment in 2002? A. The boys went over quite often

[p.100]

because of the swimming pool --

Q. Okay.

A. -- of course. I was in and out a lot because of my mom and my brother, and more to see my mom.

Q. You said your mom baby-sat the boys sometimes, too, correct?

A. Yes.

Q. And Aleeanna, the boys and Aleeanna.

A. Yes.

Q. So they spent a good deal of time there. Would you say they would be over there on a weekly basis?

A. They were over there often. I mean, there could be a week they wouldn't go over and then there would be a week they might spend three days over there.

Q. Okay. Did you contact or did Nick contact, to the best of your knowledge, the Franklin PD to tell them that he would not be bringing Tyler down for visitation with Sarah?

A. I'm not absolutely sure he did that day, but he was usually very good about calling the police station to say he wasn't coming.

[p.101]

Q. So this wasn't the first time that Nick had decided not to take Tyler down to the police station?

A. Well, I believe there was incidents where Tyler was running high fevers and sick, and it said in the custody papers, the temporary custody papers, you know, that if the child is sick, he remains with the custodial parent, that kind of thing.

Q. Do you know or do you remember whether or not Nick contacted any authorities about the bruises and the cigarette burns?

A. I know he did, but I'm not sure when, how, who.

Q. Okay.

A. I'm not exactly sure on the details.

Q. So when Nick would not take Tyler down to the police department, he would call the police department. Would he contact Sarah Kirby to tell her that he wasn't going to be bringing Tyler down?

A. No. There was a no-contact order.

Q. Okay. And that was part of that civil protection order they entered into in July,

[p.102]

correct?

A. Yes.

Q. Had you ever seen the civil protection order?

A. I've seen it, but I don't think I ever actually read it word-for-word.

Q. Did Nick --

A. I was the one that took him, so --

Q. Okay. Did Nick ever tell you that the civil protection order provided for his arrest for noncompliance?

MR. STATON: Objection. You may answer if you can.

THE WITNESS: No, my brother had never said that to me.

BY MS. JUSTICE:

Q. Did he ever tell you Sarah could be arrested if she didn't comply with it?

MR. STATON: Objection. You may answer.

THE WITNESS: No.

BY MS. JUSTICE:

Q. Okay. Do you know how -- you said you think that he may have reported the bruises and the cigarette burns.

[p.103]

Were there any other incidents that you believe that Tyler was being abused?

A. Yeah. There was the other incident of the bruising on his face.

Q. Do you know whether this occurred before August 16th, 2002 or after?

A. I believe -- I'm not sure. I'm not going to answer something I'm not sure.

Q. Okay. That's fine. Just what you know. Why did you think or why did Nick think -- if you remember, why did he think that these marks were abuse by Sarah?

MR. STATON: Objection. You may answer.

THE WITNESS: Well, I can't tell you what my brother thinks, but in conclusion from talking to him, he was concerned that Tyler was not being watched the way a child should be watched and he felt that Tyler was in danger.

BY MS. JUSTICE:

Q. Okay. Did you think that Tyler was being abused by Sarah Kirby?

A. Yes, I did.

Q. And why did you think Tyler was

[p.104]

abused?

A. It wasn't so much being abused by her but being neglected and not being watched the way a child should be watched.

Q. Okay. Do you ever recall Nick taking Tyler to the police department to be observed by the police department, the bruises or scratches or anything like that?

A. Yes.

Q. Do you know whether or not -- do you remember whether or not this occurred before August 16th, 2002?

A. I believe it was after, but I'm not sure.

Q. Okay. What did the police officers do when Nick took Tyler down there?

A. Well, I wasn't with him. His friend was with him.

Q. Okay.

A. But they came back to my house afterwards and said that Officer Bowling said he didn't see any bruising.

Q. Who is his friend?

A. Amy. I don't remember Amy's last name.

[p.105]

She was also there during the incident on August 16th.

Q. Did Nick take any pictures of those bruises, the ones that he actually went down to show the police?

A. I took those pictures, yes.

Q. Do you know if you still have copies of those pictures?

A. I -- I gave a lot of those to my brother, so I'm not -- I think I still have some, I could go through my pictures and see, but I'm not sure.

Q. Well, if you find any of those pictures, please turn them over to your attorney so that we can get copies of those. Okay?

A. I will do so.

Q. After Nick took Tyler down to the police department for the bruises on his face, did he report these bruises to Children's Services?

A. I'm not sure. There was a lot going on with him and Sarah and Tyler and custody, and Children's Services was involved, so I'm not sure.

Q. Did you ever see Sarah hit or strike

[p.106]

or anything like that to Tyler?

MR. STATON: Objection, form of the question. You may answer it if you can. It's the anything like that I'm objecting to.

MS. JUSTICE: Yeah.

BY MS. JUSTICE:

Q. Did you ever see Sarah hit or strike Tyler?

A. I've seen her smack him on the butt for things children do, but as far as abusing him, I don't know if you would call that abuse or not.

Q. Did you ever see Sarah scream at Tyler or verbally abuse him?

A. Yes.

Q. On how many occasions?

A. I can't recall exactly how many occasions. I was around it quite often, but she had a tendency to yell a lot, cuss a lot, that kind of thing.

Q. You indicated earlier that you thought that Sarah just wasn't as watchful of Tyler as she should have been, as a normal parent would have been.

[p.107]

Did you ever witness any occasion on which she should have been watching Tyler but wasn't and he got injured or anything?

A. Not that he got injured, but there was a situation that I actually didn't see, but she had walked to the pay phone to call me one evening when my brother was at work, and when I asked her where Tyler was, she said that he was at the apartment asleep, she had left him alone.

Q. Did she tell you there was no one else in the apartment at the time?

A. Yes.

Q. How old was Tyler when this occurred?

A. I'm not exactly sure. He's three now. I would probably say around a year and a half maybe. I'm not exactly sure.

Q. Have there ever been any instances where you turned your back and your kids got a scratch or a bruise?

A. Of course.

Q. Do you know whether or not Tyler has a scar from his cigarette burn today?

A. No. I -- I don't examine my nephew on a daily basis.

[p.108]

Q. Okay. Did Nick ever indicate to you that he was afraid Sarah would run away with Tyler if he gave her her weekend custody?

A. No.

Q. Who has custody of Tyler now?

A. My brother Nicholas.

Q. Does he have full custody of Tyler?

A. Yes.

Q. Is Sarah entitled to any visitation?

A. Sarah hasn't seen Tyler in over a year and a half, hasn't bothered, hasn't tried.

MR. STATON: But the question was is she entitled. Do you know?

BY MS. JUSTICE:

Q. Is she entitled?

A. Oh, yes. She's entitled, yes, in the visitation in the custody order, yes.

Q. Do you know what the custody arrangement is if she did try to have visitation?

A. I think it's what I was on through Butler County -- my exhusband was on, actually, like a scheduled thing every other weekend, every other Monday, opposite, odd -- even, odd years on holidays kind of thing.

Q. And you are just guessing, you are

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not sure what it is?

A. I think it's basically based on what my exhusband was with me.

Q. Okay.

A. I'm not for sure, yes.

Q. Okay. At any time in the past, have you or your mother been given legal custody of Tyler Combs?

A. No.

Q. So on August 16th, 2002 when you arrived at Nick's apartment, you already knew that Nick was not taking Tyler down to the police department for his visitation with his mother, correct?

A. Him and my mother had discussed it, but I didn't know for sure until I got there that day.

Q. Okay. Were you present when him and his mother -- and your mother discussed it?

A. Well, my brother discussed it with me and they discussed it in front of me.

Q. Okay. Did they just discuss the abuse and say we're just not going to take him down there because of the abuse? Is that --

A. It wasn't so much we're just not

[p.110]

going to take him down there. It was more, Mom, you know, what do you think? Should I be concerned? You know, a son asking a mother's advice kind of thing.

Q. Right. And what did your mom say?

A. She was, you know, concerned for Tyler and just told my brother, you know, it's up to you, but if you're concerned about something happening to Tyler, maybe it's not a wise thing to do.

Q. So at some point that evening, the Franklin police showed up at Nick's apartment. Do you remember that?

A. Yes.

Q. Do you know what time that was?

A. It was at 6:00 that evening, but I'm not exactly sure of the time.

Q. Do you know if you had been at Nick's apartment for a half an hour, an hour? Do you have any idea?

A. It was not a very long length of time. I would say I probably hadn't been there maybe fifteen, twenty minutes.

Q. When the Franklin Police Department showed up at Nick's door, did they knock on the

[p.111]

door?

A. Yes.

Q. Did they say -- introduce themselves as the Franklin police?

A. Well, when they knocked, my brother walked over and opened the door, and at that point, he knew it was the police.

Q. Okay. They had uniforms on?

A. Yes.

Q. Could he tell if they were the Franklin police? Is there something on the uniform that indicates that they're Franklin as opposed to --

A. Yes.

Q. Okay. When the Franklin police arrived at his door, was Sarah Kirby with them?

A. We found out later that she was, but we didn't know that from the start.

Q. Okay. So you didn't see Sarah?

A. No. There was a protection order, so she wasn't allowed in.

Q. So when Nick opened the door, all he saw was the Franklin PD?

MR. STATON: Objection. If you can say what Nick saw.

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THE WITNESS: No. I -- like he said, I wasn't standing at the door, but, yeah, from what I seen, it was the Franklin police.

BY MS. JUSTICE:

Q. Okay. Where --

A. I was standing at an angle from the door.

Q. Okay. You were at an angle. How far away from the door were you?

A. Probably from here to the window.

Q. Okay. And at an angle?

A. Yeah.

Q. How many police officers could you see at the door?

A. I only seen one.

Q. Okay. Do you remember which police officer you saw at the door by name?

A. I don't know them by name. Tall, dark hair.

Q. I think you just described every Franklin police officer. No, I'm just kidding.

A. No. Most of them are short.

Q. But you didn't see Sarah Kirby at the door at that time?

A. No.

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Q. Did Nick appear to you to be upset that the police department were -- the police officers were at his door?

A. He seemed surprised.

Q. What did he say to the police officers, if you can recall?

A. I didn't hear. I didn't hear the first few words of the conversation between him and the officer.

Q. So you didn't hear Nick tell the police that Sarah Kirby shouldn't be around him because there was this order saying that she couldn't be around him?

A. Yes, I did hear that.

Q. Okay. And if you could, just describe exactly what he said with regard to Sarah not being allowed to be around him.

A. He just said there was a protection order and she wasn't supposed to be within six hundred feet of him.

Q. Okay. And was this near the beginning of his conversation with the police officers, the part that you could hear?

A. If I recall, it was a few -- a little while into the conversation.

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Q. Okay. So you don't recall hearing the police officers tell Sarah to go back down to the cars then, or up to the cars?

A. No.

Q. Okay. And you don't recall ever saying anything to Sarah while she was at the door because you don't recall seeing her at the door?

A. I didn't know she was at the door.

Q. Okay. At this point, did the police officers inform Nick that he was under arrest?

A. Yes.

Q. Did they tell him what he was under arrest for?

A. Yes.

Q. And what was their reasoning?

A. For violating a court order or something like that.

Q. Did they place Nick in handcuffs immediately?

A. After a few sentences, yeah.

Q. When they told Nick he was under arrest, was he upset at that point?

A. Yes.

Q. What did he say to the officers?

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A. He just said -- kept saying why, and he looked at me and said, Sis, what's going on? At this point, Nick was in tears.

Q. What did you -- did you tell him anything to reassure him?

A. I just told him to calm down, let's find out what's going on.

Q. At this point, did you say anything to the police officers?

A. I was upset and asking, you know, why he was being arrested.

Q. What did the officers tell you?

A. For not letting -- not bringing Tyler to the police station for Sarah.

Q. What did you tell the officers at that point?

A. I told them that there was a reason my brother hadn't brought him, and it was because he was -- my words were we -- my brother was assuming there was abuse going on, something to that point, maybe not those exact words.

Q. At this point, were you upset that they were arresting your brother?

A. Yes.

Q. When you're upset, would you say

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that you are someone who would curse or use profanity at all?

A. Normally yes, but no, not that day.

Q. So that day you weren't using any kind of --

A. I wasn't angry. I was upset, upset about my brother being arrested. He's never even had a traffic ticket. He's never been in any kind of trouble in his life. So it wasn't so much angry to the point of cursing. It was more being upset with seeing my brother in handcuffs.

Q. In your conversation with these officers, do you think that you ever raised your voice?

A. No. Actually, that was the day I probably didn't. I was upset and crying, and my voice was in a medium tone, which I normally have a loud voice anyway. My husband will tell you that.

Q. You were crying at this point, too?

A. Yes.

Q. And you said that Joy Palmer was there?

A. Yes.

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Q. And all five -- no, four of your children were there and Tyler was there?

A. Yes.

Q. How many police officers were there at that point that you can remember?

A. There were -- by that point, there were probably four officers there.

Q. And there was a girl named Amy there?

A. Yes.

Q. So that's, what, ten to fifteen people in this apartment at the time?

A. Actually, the officers were still standing in the hallway at this point.

Q. Okay. Okay.

A. And my children were not in the apartment. They were at the swimming pool.

Q. Okay. So they weren't actually there when Nick was being arrested?

A. Not when Nick was being arrested, no.

Q. Okay. So the only persons in the apartment when Nick was being arrested were Nick, you, Amy, Joy, Tyler, and --

A. And my mother.

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Q. -- the little one, Aleeanna?

A. Aleeanna and my mother, yes.

Q. At any point, did you tell the officers that they shouldn't be arresting Nick?

A. No. I wouldn't tell a cop you shouldn't be. I just said -- I think at some point, I said I didn't understand the reasoning in arresting him.

Q. And you didn't raise your voice at all?

A. No.

Q. And you didn't use any curse words?

A. No.

Q. So the officers put Nick in handcuffs. They tell him he's under arrest, they put him in handcuffs. At this point, do they begin to discuss what was to happen to Nick's son Tyler?

A. I think at that point was when I was discussing the temporary custody papers, and I actually had those at my house, so I left to drive and get those and bring those back to show them to the officers.

Q. How far away was your house from there?

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A. Ten blocks, guessing, estimating.

Q. Did you take your van?

A. Yes.

Q. What happened to Nick while you went to get these papers?

A. They were -- they were still holding him in custody, but they hadn't left with him yet.

Q. There in his apartment?

A. Yes.

Q. Okay. So you drove your white van to get these papers. At any point from the time you left his apartment to the time that you returned to his apartment, did you have any contact with Sarah Kirby?

A. No.

Q. Did you see her at all?

A. No. I didn't see her until the end.

Q. Okay. Did anyone tell you by this point that Sarah Kirby was even there?

A. I didn't know she was there until like toward the end when they had already took my brother out and everything.

Q. Okay.

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A. As far as I knew, she wasn't allowed there.

Q. So the officers -- then what brought up the conversation or what made you go get these temporary custody papers?

A. They -- they were saying -- I don't -- I don't recall the exact conversation, but it was something to the extent of they were arguing that my brother didn't have custody, there was no custody established yet, and I said yes, there's temporary custody papers already. But my brother had gave them to me for some reason earlier in that week. I had to take them somewhere for something, and so they were at my house, or he had come to visit and left them at my house. I can't recall exactly why I had them.

Q. These temporary custody papers you're talking about, are we still talking about the civil protection order that they entered into in July or some other custody papers?

A. No, no. Nick actually went and filed for temporary custody.

Q. When did he file those custody papers?

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A. I have no idea of the exact date.

Q. Was this after the protection order was entered into or before?

A. I don't know, honey, I honestly don't.

Q. Do you know what the provisions of the custody papers were as far as the visitation schedule or whether or not there was any visitation?

A. I think it was just a temporary custody thing. I'm not exactly sure how it works, so no, I don't know.

Q. It was just something giving him custody of Tyler?

A. It was just saying at the moment, until it got into a custody hearing and all that, I think.

Q. Okay. I see. But you nor your mother had custody of Tyler, right?

A. No.

Q. Nick is the one that had custody of Tyler?

A. Yes, yes.

Q. So you say, well, I'll go get these

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temporary custody papers and I'll be back?

A. Yes.

Q. And they hold Nick there in his apartment and wait for you to come back?

A. Yes.

Q. Do you know if Nick told the officers that there was a court order prohibiting Sarah from having custody of Tyler?

A. No.

Q. He didn't tell them that?

A. I don't know.

Q. Okay. Okay.

A. No, I don't know.

Q. Were you in the apartment when the police officers actually called Nick's attorney?

A. I actually called Nick's attorney and handed the phone to the officer.

Q. Okay. And what were you trying to explain to the officers by doing this act?

A. I was just trying to find out if they had the right to be there to arrest him, because no one at this point had showed me a warrant, and I was trying to establish at this point if they actually had good reason for arresting him.

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Q. Okay. And so you call his attorney and hand it to the police officers, correct?

A. Well, I think I said a few things to Roger first and I told him what was going on, then I let him talk to the officer.

Q. Okay. Do you know if at this point, the officers were trying to verify whether or not Nick could be arrested or verify whether or not Sarah could have custody of Tyler?

A. No, I don't think -- I don't think the officers were trying to verify if they could arrest Nick. I think they know they can arrest Nick if they want to. I think at this point, it was a little bit of, you know, I wanted him to know and I was concerned about whether they had a right to arrest Nick, but I think the phone conversation also had to do with whether they could take Tyler from me and my mother and take him out and hand him to Sarah.

Q. Okay. So at this point, you have figured out that Sarah's around?

A. I figured out they were going to take Tyler and give him to Sarah. I knew that much.

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Q. Okay. I know you could only hear one end of the conversation. Do you remember hearing what the police officer said when you --

A. Honey, I honestly don't because there was so much going on between Tyler crying, me crying, my mom crying. I didn't really listen, so honestly, I don't recall the conversation.

Q. Was this after you had returned with the temporary custody papers or before?

A. It was after, I believe.

Q. Okay. Do you know whether or not there was a court order in place at the time that would prevent Sarah from having visitation of Tyler?

MR. STATON: Objection. You may answer.

THE WITNESS: I don't. I'm not a lawyer, but as far as I know, she still had visitation rights.

BY MS. JUSTICE:

Q. Do you know, were you present when the officers called Children's Services?

A. Yes.

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Q. What part of that -- were you able to hear that conversation that they had with Children's Services?

A. I heard a little bit, but I don't recall it.

Q. Okay. Do you have any recollection as to why the officer called Children's Services?

A. To see if we had a basis to not let Sarah have Tyler.

Q. And do you remember or do you know what the result of that conversation was?

A. The officer, after he got off the phone, said that the Children's Services lady said that basically there was no basis for us to hold Tyler from Sarah.

Q. Okay. Now, did this conversation occur before or after the conversation with Nick's attorney on the phone?

A. I think it was after, but I'm not sure.

Q. Okay. At this point, would you agree that you were very upset?

A. Yeah, I was upset.

Q. And you were upset that Nick was being arrested, right?

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A. Between that and the thought of my nephew being in danger, yes.

Q. And so you were also very upset that they were giving Tyler to Sarah even though you believed that she was abusing him?

A. Not upset that they were giving him to her but just upset at the thought of him going over there and coming home with an even worse bruise or something --

Q. Okay.

A. -- before someone had investigated it, looked into it, that kind of thing.

Q. You were more upset that Sarah would have Tyler than the fact that the police were the ones giving Tyler to Sarah, right?

MR. STATON: Objection. You may answer if you can.

THE WITNESS: I mean, I'm -- can you rephrase that?

BY MS. JUSTICE:

Q. It wasn't so much that the police officers were giving Tyler over to Sarah, it was the fact that Sarah would have Tyler and could possibly abuse him that upset you?

MR. STATON: Objection. I don't see

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the difference between the two, but you are the one who has to answer it.

THE WITNESS: No. I'm -- I'm -- I just don't --

BY MS. JUSTICE:

Q. Okay. So tell me again, what was it that upset you at this point?

A. It was just upsetting that my brother was getting arrested, and it was upsetting that Tyler could be taken out of the house and come back with another bruise possibly.

Q. Did you tell the officers that you thought it was wrong for Sarah to have custody of Tyler at this point?

MR. STATON: Objection. You may answer.

THE WITNESS: No.

BY MS. JUSTICE:

Q. You never told the officers that Sarah shouldn't have custody -- or shouldn't have visitation because she was abusing Tyler? You never told them that?

A. No.

Q. Did you tell the officers anything that day?

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A. To that effect, I said -- I explained to the officers how he had come home the weeks before, the weeks prior, whenever her last visitation was, and I said I can't believe you're going to take a child and hand him over to someone where he has come home in this condition and not knowing the facts and the basis and the chance that this child could get hurt again.

Q. And when you told them this, did you do so in the calm voice that you have today or an excited voice? Do you remember?

A. Of course I wasn't as calm as I am now, but I was upset. I was crying as I was talking to them.

Q. Do you remember whether or not you told them this on more than one occasion?

A. I probably said it a couple times, yes.

Q. At this point, you said you were crying, your mom was crying, Nick was crying. Was anyone else crying, like Tyler?

A. Tyler, yes.

Q. Okay. How about Aleeanna? Was she okay?

A. No. She was little. She was

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little.

Q. Okay. But I did get her name right. So Tyler was crying and upset at this point?

A. Yes.

Q. Okay. So the officers talked to Nick's attorneys, they talked to Children's Services. At what point did the officers decide to take Nick out of the apartment?

MR. STATON: Objection. You can answer if you can.

THE WITNESS: I don't know.

BY MS. JUSTICE:

Q. Okay.

A. I'm not exactly sure. I can't say at 7:05 or whatever. You know, I can't.

Q. Okay. Did they take Nick out of the apartment before they took Tyler out of the apartment?

A. Yes.

Q. Was it still daylight when they took Nick out of the apartment?

A. I don't recall. I'm pretty sure it was daylight.

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Q. Were the boys back from swimming at this point?

A. Yes. They had come in and I had told them to go outside because I didn't want them to see what was going on.

Q. And when you say you told them to go inside, what do you mean?

A. Go outside.

Q. Oh, go outside. I'm sorry.

A. Yes.

Q. Do you know where they went when they went outside?

A. They were standing outside the foyer.

Q. I guess maybe I just didn't understand how Nick's apartment entrance was set up. Do you actually have to go inside the apartment building before you get to the door of his apartment?

A. You have to go inside some double doors into a foyer and down some steps –

Q. Okay.

A. -- to his apartment.

Q. So it doesn't have like an external

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entrance that you would just walk up to? You have to actually --

A. Right. You actually have to enter the apartment building first.

Q. Do you have to be buzzed in or anything like that?

A. No.

Q. Okay. So when the officers took Nick out of the apartment, whose responsibility was it to turn Tyler over to them?

A. I guess at that point, it would have been mine or my mother's.

Q. Was either of you actually holding Tyler or carrying Tyler around at this point?

A. I'm not sure, but I think at some point I picked him up.

Q. Do you remember where Aleeanna was at this point?

A. She was in the carrier.

Q. Okay. At any time did the officers try to calm you and your mother down?

A. Yes. At one point, Officer Bowling spoke to me privately.

Q. What did Officer Bowling say to you?

A. He took me out in the hallway and

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he -- I can't remember exact words, but something to the effect of, LaDawnya, I know you're upset, but you need to calm down. The children and stuff are getting upset seeing you upset. It's not helping the situation. I said to him I know, but I would rather see you arrest me than my brother, I said, because I would be able to handle the situation better than my brother is. I said he's never been in trouble. He has a nerve condition called lupus, and he's -- he did when he was younger.

It's gotten better as he's gotten older, and I said he's not going to be able to handle being locked up or going to jail. And he said I understand you're upset, he said but the children don't need to see you upset, and he said the situation is going to go a little smoother if you just try to calm down and don't be so upset. And I said okay and we walked back in the apartment at the time, because we stepped out into the hallway to have our conversation.

Q. Were the boys out in the foyer then?

A. No. They had come in like twice in

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between all this going on, hey, Mom, you know what's going on, and I said, you know, go outside. Mom will be out in a minute. It's okay.

Q. So Officer Bowling tried to calm you down. Was this before Nick had been taken out of the apartment?

A. Yes.

Q. Did he try to calm down your mother?

A. No.

Q. What was your mother doing during all of this?

A. She was crying, upset.

Q. What was Amy doing at this time?

A. Sitting on the couch. She's -- she has a disease, something like polio, and she walked on them one things that wrap around your arm (indicating), so --

Q. Okay. And Joy, do you recall what she was doing?

A. She was sitting on the couch.

Q. Were Joy or Amy saying anything to the officers or to Nick?

A. No. They pretty much stayed out of

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it.

Q. Okay. So when the officers took Nick out of the apartment, it became sort of your responsibility to take care of Tyler. At this point, you didn't want to turn Tyler over to Sarah; is that correct?

MR. STATON: Objection. You may answer.

THE WITNESS: It wasn't that -- I didn't really try to restrain him or not --

BY MS. JUSTICE:

Q. Right.

A. -- hand him over, but I didn't feel that I was putting him in safe hands if they handed him to Sarah at that point.

Q. So my question was you didn't want to.

A. Basically I didn't want to see him go with his mother, no.

Q. Okay. Did the officers ask you to get Tyler dressed?

A. Actually, no. They were going to take Tyler as is, and I said the baby needs clothes on, so they said okay. Then get him dressed.

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Q. Okay. What was Tyler wearing when all of this first began occurring?

A. A diaper.

Q. Okay. So you tell the officers you are going to get Tyler dressed, and do you do so?

A. I walked back in the bedroom to get his clothes and two officers followed me to the bedroom.

Q. When you walked back to the bedroom to get his clothes, did you have Tyler with you?

A. Yes, I had him in my hands.

Q. Okay. Do you recall which officers it was that --

A. One was a short bald guy, and I don't remember the other one.

Q. Neither of these were Officer Bowling, then?

A. No.

Q. How many officers were in the apartment at this point, do you remember?

A. Honey, I can't tell you. There were quite a few there.

Q. Okay. We know Bowling, short bald guy, nameless guy. There's three. So at this point, were there more

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than those three?

A. At this point, I walked back to the bedroom, but in between me and Bowling going out in the hallway and coming in the apartment, there were cops everywhere, I mean, as far as I could see, just --

Q. So more than five police officers?

A. Pretty much, yeah.

Q. Okay.

A. I think the whole Franklin Police Department ended up there that day.

Q. Okay. Other than Officer Bowling, could you name any of the officers that were there that day?

A. I knew none of them by name except for him on that day.

Q. At this point, were you still telling the officers that you didn't believe Tyler should be going to Sarah?

A. At this point, I was talking back and forth with the short bald-headed one. I hate to refer to him like that.

Q. Okay. You have to do what you have to do. What do you mean you were talking

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back and forth with him?

A. I was telling him that I didn't think it was -- I don't know how I exactly phrased it, I don't remember how I exactly phrased it, but I didn't think it was a very wise thing to send a child with someone who had just previously brought him home with bruises and cigarette burns, and he was saying, well, you know, this is how it has to go, I know you're upset, just basically conversation to that degree.

Q. At this time, were you still crying and upset?

A. I was crying the whole entire time.

Q. So you got Tyler dressed?

A. I didn't get to finish dressing him.

Q. Okay. Well, tell me what happened then.

A. The officers come over and restrained me and pretty much jerked Tyler from my arms, said they didn't want to wait anymore.

Q. Okay. What did he have -- what other clothing items did you have still to put on Tyler?

A. Socks and shoes.

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Q. So he was still shoeless at this point?

A. Yes.

Q. Okay. Barefooted?

A. Yes.

Q. Did he have pants on?

A. Shorts.

Q. Shorts. Did he have a shirt on?

A. Yes.

Q. Okay. So the officers restrained you. What do you mean they restrained you?

A. He grabbed me by the arm as the other officer pulled Tyler from my arms.

Q. Which officer grabbed you by your arm?

A. The bald-headed guy.

Q. The short bald guy?

A. Yeah. I hate referring to him like that.

Q. And the other guy grabbed Tyler?

A. Took Tyler from my arms, not so much grabbed, because I wasn't fighting them or

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anything.

Q. Okay.

A. They just (indicating).

Q. Was Tyler crying?

A. Yes.

Q. Did you say anything to the officers about his shoes and socks?

A. Yeah. I said why -- you could at least let me finish dressing him. They said we're tired of waiting. We're not waiting anymore.

Q. Did you say here, here are the shoes and socks, at least put them on him?

A. Yeah. I handed them diapers, shoes, socks, that kind of thing that they needed to take with him.

Q. Okay. Which officer did you hand the diapers and things to?

A. I don't really remember.

Q. The short bald guy?

A. It was so emotional, I just don't remember.

Q. Okay. When the short bald guy grabbed your arm and restrained you, did that hurt?

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A. Yeah.

Q. What part of your arm did he grab you by?

A. Somewhere in here (indicating). I'm not exactly sure. He just kind of grabbed me by the arm, and he pulled to this side, and Tyler was here and the other officer was here (indicating), and the other officer came up in front of me, so it was kind of like a jerky thing, but I don't remember exactly.

Q. Were you sitting down?

A. Yes. I was sitting on the bed.

Q. So the officer wasn't trying to help you up off the bed. He was restraining you to the bed?

A. He was actually jerking me up off the bed.

Q. Okay. So the officer actually pulled you up?

A. Yes.

Q. And as he was pulling you up, the other officer took Tyler?

A. Come up and grabbed Tyler out of my arms.

Q. And you were still in the process of

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getting up when Tyler was removed from your arms?

A. Well, yeah. I had come to my feet fully, but it was -- like it happened really quick.

Q. But you were mostly already standing up when he took Tyler?

A. Yeah. I had pretty much come to my feet, yes.

Q. Did the officer tell you to stand up before he grabbed your arm?

A. No.

Q. Did they say -- you said that they said that --

A. They continuously were telling me to hurry up, hurry up, hurry up.

Q. Okay. They said we're tired of waiting and hurry up. How often --

A. I can't say those exact words, but somewhere in -- we're not waiting anymore, we're not -- something to that effect.

Q. Okay. So they -- how many times do you think that they told you to hurry up as you were putting his clothes on?

A. Two or three times.

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Q. And then they just said we're not waiting anymore, grabbed your arm, pulled you up, took Tyler?

A. Yep. Yes, ma'am.

Q. Okay. Did -- when the officer took Tyler, you said that he didn't actually grab him, he took him like you would take a baby; is that the --

A. Well, I -- when he went to grab Tyler, I handed him to him because I didn't want Tyler to be hurt or upset, so I just pretty much (indicating) --

Q. Okay. I see.

A. Because I didn't want Tyler to be jerked in between the two of us or anything like that, so I wanted it to be as easy on Tyler as it could possibly be.

Q. Okay. When the officer took him, did he look like he held him in a way that would injure Tyler at all?

A. No.

Q. Okay. At this point, were you still protesting with the officers, hey, you know, Sarah shouldn't have this child, that kind of thing?

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A. I wasn't protesting, but I was still upset with the fact that they were going to turn him over.

Q. Were you still verbalizing that upset?

A. I don't know at that point, because at the point of them jerking me up, I got upset over the way he jerked me up off the bed.

Q. Did you tell the officer you were upset about the way you were jerked off the bed?

A. Yeah. I said there was no reason for you to grab me like that. I'm trying to get the baby dressed. You could at least let me finish getting him dressed. They just didn't want to wait anymore.

Q. At that point, were you angry?

A. No.

Q. Did you use any kind of curse words?

A. No, ma'am.

Q. No profanity at all?

A. No, ma'am.

Q. So the officers have Tyler at this point. Do you follow them out of the

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bedroom?

A. Yes.

Q. Were you giving the officers any kind of instructions on how to care for Tyler or, you know, here's his stuff, that kind of thing?

A. No.

Q. Do you recall saying anything to the officers at this point?

A. I think I pretty much finished with them at that point. They went on out the door with Tyler.

Q. When the officers took Tyler out the apartment doors, did you follow them out of the apartment?

A. Not immediately.

Q. At what point did you follow them out the doors?

A. Tyler -- they went out the door with Tyler. My -- Officer Bowling -- I can't remember in what order, if it was my mom first and Officer Bowling or Officer Bowling and then my mom, but they went out and shut the door and I remained in the apartment.

Q. So your mom actually followed them out with Tyler?

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A. Yes.

Q. Okay. Were the boys still out in the foyer at this point?

A. Yes. Actually, they were standing in the parking lot, I guess.

Q. Okay. So the boys are standing in the parking lot, Amy and Joy are still sitting on the couch?

A. Yes.

Q. And at this point, it's just you, Aleeanna, Amy, and Joy in the apartment with the door closed?

A. Yes, yes.

Q. Okay. Do you know whether or not Nick had actually been placed in the squad car by then?

A. By that point, Nick was gone.

Q. Okay. So your mom -- why did your mom follow the officer out of the apartment, do you know?

A. She was just upset. That's her grandson.

Q. Okay. Was she saying anything to the officers that you heard?

A. She was pretty upset.

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Q. Did she -- was she also telling them that Sarah shouldn't have the baby, that kind of thing?

A. Yes.

Q. Okay. At any point was your mom using any curse words or profanity?

A. I think my mom did that day.

Q. Is it unusual for your mom to use curse words?

A. She basically tries to watch herself around the kids, but, you know --

Q. Okay. So she follows Officer Bowling out the door. Was Officer Bowling the last one to leave?

A. The last officer, yes.

Q. Okay. And your mom follows him. She's upset, telling him he shouldn't be taking the baby. At some point, you follow them out the door. Do you remember how long it was that you stayed in the apartment?

A. I can't tell you exactly, but it wasn't very long.

Q. Okay. A minute, two minutes?

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A. Somewhere around there, maybe a minute, somewhere in there.

Q. And what did you do when you went out the apartment door?

A. I walked up the steps, walked out into the foyer. My mother was standing there, and I stood -- looked at my mother to make sure she was okay and looked across the parking lot, and that is the point where I realized Sarah was there. And I seen them putting Tyler in the car and I said have my nephew home Sunday at 6:00 -- or I said remember, Sunday at 6:00 was my exact words.

Q. And you were right outside the apartment door?

A. Yeah, right outside the foyer.

Q. How far away was Sarah from you at this point?

A. Probably farther than that door (indicating).

Q. I'm not a very good judge of distances. Would you say a quarter of a football field? No?

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A. If I had to judge it, I would say thirty, forty feet.

Q. Thirty, forty feet? Okay. So you had to raise your voice to tell Sarah to bring him back by Sunday?

A. Yeah, higher than a normal tone, yes.

Q. Now, you were very upset when you told her this, weren't you?

A. I was upset crying, but not angry, not -- not hyped up, not that kind of thing.

Q. Okay. So when you saw Sarah with Tyler, you weren't angry?

A. No. I was upset and hurt that day more than I was anything.

Q. But you did become more upset when you realized that Sarah was there, correct?

A. No. It was basically the same upset. I mean, seeing Tyler in her arms and everything, yeah, it's upsetting, but, I mean, it didn't change anything. I was no more upset then than I was a minute before that in the apartment.

Q. Okay. I see. When you told Sarah that she needed

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to have Tyler back at 6:00 or your nephew back at 6:00, did you use any curse words or profanity?

A. No, ma'am.

Q. Were these the only -- was this the only statement you made to Sarah that day?

A. The only.

Q. At any time that day did you call Sarah a fucking bitch?

A. No, ma'am.

Q. At any time that day did you call Sarah a whore?

A. No, ma'am.

Q. At any time that day did you call Sarah a motherfucker?

A. No, ma'am.

Q. So if individuals present that day testify that you called her these things, they would be lying; is that correct?

MR. STATON: Objection. Objection. You may answer if you can.

MS. JUSTICE: Well, if she's telling the truth, then they would have to be lying.

BY MS. JUSTICE:

Q. Correct?

MR. STATON: Well, that's your

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conclusion.

THE WITNESS: As far as I'm concerned, they would be lying.

BY MS. JUSTICE:

Q. Okay.

MR. STATON: Well, for the record, I'm going to state simply because somebody says something differently, two people say something -- they heard something different doesn't mean that one is lying or either is lying. It could mean that one is misinterpreting what he or she heard. You can proceed.

MS. JUSTICE: But that's not true when she indicates --

BY MS. JUSTICE:

Q. You did say that you never called Sarah a bitch, correct?

A. I never called her anything that day.

Q. You never called Sarah a whore, correct?

A. Never that day.

Q. You never called Sarah a

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motherfucker that day?

A. I never said any cussword to anyone that day in any way anyhow.

Q. You didn't say any cusswords that day?

A. None.

Q. Okay. And so the only statement, again, I'm sorry -- the only statement you made to Sarah was that she needed to have your nephew back at 6:00?

A. I believe my exact words were remember, Sunday at 6:00.

Q. Okay. Did you ever hear your mother call Sarah a fucking bitch this day?

MR. STATON: Objection. You may answer if you can.

BY MS. JUSTICE:

Q. Did you hear it?

MR. STATON: Objection.

THE WITNESS: My mother said quite a few things that day, but I'm not sure what they were.

BY MS. JUSTICE:

Q. Okay. You don't recall anything your mother said that day?

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A. Not now, no. I can't go back and say, well, my mom said exactly this, no. My mom was upset. She said some things, but I can't sit here and tell you exactly what she said, no.

Q. Okay. So you don't recall anything your mother said that day, correct?

A. I recall that -- what it was about and, you know, to what extent it was, but I don't recall exact words.

Q. Did your mother ever curse toward Sarah?

A. No, not toward her, no.

Q. Did your mother ever curse toward the police officers?

A. No. My mom would never, no.

Q. Okay. Did you or your mother -- did your mother tell Sarah she wasn't fit to be taking care of Tyler?

A. My mom didn't get close enough to talk to Sarah that day.

Q. Okay. So did your mother ever tell Sarah your ass is mine?

A. At some point, I think she did say that if she got her hands on her, she would kick

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her ass.

Q. But she didn't say that directly to Sarah, to the best of your knowledge?

A. No. She didn't get close enough to talk to Sarah that day.

Q. She said this to you?

A. No. At some point during all the commotion, I think I remember her saying something to the point of if I get my hands on her, I'm going to kick her ass or something to that point.

Q. But who was she saying that to?

A. She was saying it about Sarah but basically saying it in the commotion.

Q. Not to anyone?

A. Not directly to anyone.

Q. She wasn't talking to anyone?

A. Not directly to anyone.

Q. Okay. Did you hear anyone direct any curse words or profanity toward Sarah that day?

A. No.

Q. Do you have any knowledge as to what Nick did when he left the apartment that day?

A. I wasn't outside when Nick left.

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Q. Okay. Has Nick told you that he said anything to Sarah that day?

A. No. I don't know. What I was hesitating for is my brother's not the type to curse or scream or holler or yell. My brother's a very sensitive person.

Q. Right. Are you the type to curse or scream or yell?

A. At times, if needed, yes.

Q. When you told Sarah that she needed to have your nephew back -- or remember, 6:00 on Sunday, you were very serious about that, correct?

MR. STATON: Objection. You may answer.

THE WITNESS: What do you mean by serious?

BY MS. JUSTICE:

Q. Did you say it to her in a serious manner?

A. I'm not sure what you mean by serious, so I don't know how to answer the question.

Q. Did you point to Sarah and say

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remember, 6:00 Sunday, that kind of thing?

A. Are you asking if I was yelling, if I was angry, if I was –

Q. No. I asked did you point at Sarah and say remember, 6:00 Sunday.

A. I don't remember if I pointed, but I do remember -- I believe my exact words were remember, Sunday at 6:00.

Q. Okay. Did you think that Sarah would be threatened by you telling her this in this manner?

MR. STATON: Objection. You can answer.

THE WITNESS: I don't know if she would be threatened by this or not.

BY MS. JUSTICE:

Q. But you didn't believe you were threatening her?

A. I know I wasn't threatening her.

Q. Okay. Were you aware that Sarah was pregnant at the time that this all occurred?

A. No.

Q. Were you aware that Sarah had a miscarriage later of that pregnancy?

A. No.

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Q. Did the police ever tell you to get back in your apartment?

A. No. I'm sorry. I didn't mean to be rude. I wasn't laughing about the miscarriage. It was something else.

MR. STATON: That's because she lied at the hearing about being pregnant.

THE WITNESS: Yeah. She lied at another hearing that she wasn't pregnant.

MR. STATON: Yeah, under oath.

BY MS. JUSTICE:

Q. Okay. When you told Sarah she better get Tyler -- or when you told her that, the statement you said, did the officers then tell you you were under arrest?

A. No. Before I could even take my breath back in, Officer Bowling had ahold of me screaming that he had had it with me, he was sick of me. So no one said you're under arrest.

Q. Okay.

A. And he caught me by surprise from behind. I didn't even know he was standing behind me.

Q. Okay. And when he grabbed you,

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where did he grab you?

A. He grabbed me by the arm.

Q. What part of your arm?

A. Here (indicating).

Q. Grabbed you by the bicep?

A. Yes.

Q. From behind, though, right?

A. Yes.

Q. Do you remember which arm he grabbed you by?

A. He grabbed me by the arm and then he grabbed me -- it happened so quick, I can't tell you exactly where and what and where his hands were and that kind of thing. It happened really quick.

Q. Where exactly were you standing when Officer Bowling grabbed you? Still right outside the door, outside the foyer?

A. Yeah.

Q. Okay. So you hadn't actually gone further toward Tyler?

A. I might have been standing in the first block of the sidewalk where it began, somewhere at that point, in between the little lines and the sidewalk, between the sidewalk and

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the patio part, that kind of thing.

Q. Okay. You were still about thirty or forty feet away from Sarah then, you think?

A. Yes.

Q. Okay. And so he grabbed you by the bicep. Did he grab you with two hands or just one hand immediately? What was the first thing you felt?

A. I felt one arm grab me immediately and then the other arm grab me right behind it. I mean, it was real quick.

Q. Okay. And when the other arm grabbed you, do you remember where that arm grabbed you?

A. Not exactly.

Q. Okay.

A. I'm sorry. I need to answer aloud.

Q. Oh, no, no. You're doing really well. Are you hungry?

A. Are you hungry? I could sure use a bathroom break.

Q. Sure. Absolutely, absolutely.

(Recess taken.)

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BY MS. JUSTICE:

Q. So we were talking about Officer Bowling grabbing you by the arm. He grabbed you by both arms. What did he do? Describe for us what he did next.

A. All I heard was I've had enough, I'm sick of it, and he come up and he grabbed me from behind and he proceeded to shove me down the sidewalk. At this point, I turned my head to look at him to say you don't have to do this, I will stand and let you arrest me, and he just continued to shove and grab and shove, and I said again you don't have to do this, I will turn around and let you arrest me. Well, it was, I don't know, a couple feet and we finally hit a van.

Q. Okay. So he has you by both arms and he's shoving you down the sidewalk. Was he telling you anything at this point?

A. No.

Q. How far -- when you say he kept shoving you down the sidewalk, how far down the

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sidewalk feet-wise until you came to the van?

A. A couple feet.

Q. A couple feet?

A. Yeah, a couple, few feet.

Q. Was he trying to put your arms in a position where you could be handcuffed?

A. At that point, I didn't know what he was trying to do.

Q. But twice on the way you turned your head and said you don't have to do this, I'll stop?

A. Well, the first time I kind of leaned to the side and I went to look at him and say you don't have to do this to me, I will stand up and let you arrest me. I will allow you to arrest me.

Q. When he was shoving you down the sidewalk, were you straight up with him having your arms or were you bent over?

A. I don't exactly remember. It was just a lot of commotion within that few seconds.

Q. Okay.

A. It happened really fast.

Q. Do you remember as he was shoving you how he had his hands? Was one hand still on

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your bicep?

A. He moved them a couple times, but, yeah, the one hand stayed here (indicating) because that's where I ended up with the bigger bruise.

Q. And the other hand, you're not sure where it was?

A. In the commotion, I think he moved his hand a couple times. I just don't honestly remember, to be honest.

Q. But it was on your other arm, right?

A. Somewhere in that proximity.

Q. So it may not have been on your arm the whole time?

A. He -- I -- I don't -- I don't remember, honestly.

Q. Okay. Okay. You just remember that he definitely had ahold of one arm around the bicep area?

A. Right.

Q. Okay. So he was shoving you down the sidewalk a couple feet and you hit the van. What part of your body hit the van?

A. My front, front part (indicating).

Q. Okay.

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A. Chest, stomach, that kind of thing.

Q. Did your head hit the van?

A. When he grabbed me by the head and pushed it down into the van, yeah.

Q. Okay. We'll get there. The first contact your body had with the van was when you were shoved into it, your chest and body, the front part of you?

A. The frontal part of the body, yeah.

Q. The first contact was not your head, right?

A. No.

Q. Okay. How hard would you say that you were shoved into the van? Was it the same speed he was shoving you down the sidewalk or did the impact at the van -- was that more severe?

A. It was aggressively.

Q. Okay. Did you believe that he was intentionally shoving you against the van?

A. Yes, I did.

Q. Okay.

A. I don't know how many times I said over and over again you don't have to do this to me, I will let you arrest me.

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Q. Okay.

A. I said it repeatedly.

Q. In the couple feet that he was shoving you?

A. Between that and hitting the van, yeah.

Q. And so you hit the van very hard, right?

A. Yes.

Q. Then as your body hit the van, what happened next?

A. He grabbed me by the head and shoved my head down into the top of the van (indicating).

Q. Okay. So what part of the van did he shove you against? Was it the --

A. We started out on the front and ended up kind of on the side at an angle.

Q. Okay.

A. If you are looking at the van, it would have been the left-hand side, the left front corner.

Q. Okay. So when your body first impacted the van, was it the front grille, the front fender, what part?

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A. I'm finishing the last bite of my cracker. I'm sorry.

Q. Sure.

A. It was the front corner, so it would have been the grille and the bumper and the quarter panel.

Q. Okay. So you're shoved against that, and then you sort of shift to the side; is that what you said?

A. Yes.

Q. And at that point --

A. Because he's still shoving me at that point.

Q. Okay. Okay. On the left side of the van, right?

A. If you're looking at the van, it would be the left side. If you are looking at it from the front end, it would be the left side.

Q. Okay. I think I understand. Was the van --

A. If the headlights are looking at you, then it's the left side of the van.

Q. So the van was facing toward your right. As you were being shoved toward the van, it was facing toward your right, the front --

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A. As he was shoving me down the sidewalk, the van was directly in front of me, right straight in front of me.

Q. Okay. Okay. I get it. So he shoved you against the van really hard. You shift over to the side of the van. He pushes your head down onto the top of the van, right, the hood of the van?

A. Yeah. Kind of the side and the hood, just kind of -- the side of my face just smacked (indicating).

Q. Okay. Do you know what kind of van this was?

A. It was a minivan. I don't know if it was a Ford, I don't know if it was a Chevy. I have no clue.

Q. Well, I just know that vans, they don't have like much of a front to them, they're sort of cut off pretty quickly, and you said that your head hit the hood. Was it sort of the hood and the quarter panel that your head hit?

A. Yes, ma'am.

Q. Okay. When he shoved your head down, he shoved it pretty hard, correct?

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A. Yes, ma'am.

Q. What part of your head hit the --

A. The side of my face (indicating).

Q. Do you remember which side of your face?

A. I believe it was the left side. Well, it would be my right. If you are looking at me, left (indicating).

Q. And you weren't resisting the officer at this point?

A. I was telling him the whole time if he would just let me go, I would stand up and let him put the handcuffs on me, the whole entire time.

Q. Were you raising your voice when you were telling him that you would let him put the handcuffs on you?

A. I had gotten a little more upset at that point, yeah.

Q. But you didn't use any curse words that day, correct?

A. No. I can honestly say that was the one day in my life I did not cuss.

Q. So the side of your face hits the van.

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What happens next?

A. He's pulling on my arm behind me, and as he's pulling, I can feel my shoulder popping, and at that point, the other officer come around the rear of the van and come up behind me and stuck his knee in my back, and at that time, they were still -- they kept -- I would raise my head, and they kept slamming my head back down on the van (indicating). And the other officer grabbed my other shoulder and at that time I told them they were hurting me, and I was continuously saying please don't do this. I will stand up. I will let you handcuff me. I will let you arrest me. You don't have to do this to me.

Q. You kept raising your head to tell them this?

A. Yes.

Q. And they kept pushing it back down into the van?

A. Kept pushing me back down into the van, yes.

Q. And do you know who the officer was that had his knee in your back?

A. I know now.

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Q. And who was that officer?

A. Officer Diekman.

Q. Do you know which officer put handcuffs on you?

A. No. I can't see behind my back.

Q. So when you raised your head to tell them this, you couldn't actually see the officers back there?

A. No. It was going on so fast, they weren't giving me time to see anything.

Q. Okay. From the time that Officer Bowling started pushing you down the sidewalk to the point where they have handcuffs on you, do you know how long that took?

A. I have no clue. Minutes probably.

Q. What were the officers saying to you during this time?

A. Bowling was irate. He was just – the first words that come out of his mouth when he grabbed ahold of me was I've had it with her. I'm sick of this. At no point did anyone say you're under arrest. At no point did they say why they were doing this to me.

Q. Did Officer Diekman say anything to

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you?

A. I don't recall that he did.

Q. As they were trying to put handcuffs on you, was Bowling saying anything additional to I've had enough of her?

A. He was irate. I can't recall, but he was saying different stuff like -- I don't – I don't recall, honestly. It just -- it happened so fast. I recall those few things he said. There was, you know, a lot of commotion, so I don't recall exactly everything that was said at the time.

Q. Do you know whose van you were shoved against?

A. I have no clue.

Q. Have you ever seen the van in that parking lot before?

A. Not that I could recall.

Q. Have you seen that van in the parking lot since?

A. No. My brother moved out shortly thereafter.

Q. So the officers when they shoved you against the van, they -- did they shove you hard

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enough where you could -- there was a dent in the van? Could you tell?

A. I don't think so. I can't be sure. I never seen the van again.

Q. So when they raised you up off the van, you were facing the van, correct?

A. Yes.

Q. You didn't see any dents or anything like that?

A. The van would have been the last thing I was paying attention to.

Q. Right. Could you tell me how the officers pulled your arms back? Did they grab you by the wrist, for instance?

A. I don't know exactly where their hands were placed, but they were jerking hard.

Q. Okay. They were jerking hard on your arms?

A. Yes. To the point where I could feel my shoulder pop.

Q. Okay. Why? I mean, were they trying to put handcuffs on you by jerking your arms back?

MR. STATON: Objection. You may answer if you can.

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THE WITNESS: I'm not -- I'm not sure what Bowling was doing, to be honest, because like I said, I told him fifteen times if not more you don't have to do this to me. I don't know what his deal was, honestly. I don't know. I wasn't fighting him, I wasn't resisting

arrest. I told him several times please just let me stand up. I'll let you put the handcuffs on me. You don't have to do this to me.

BY MS. JUSTICE:

Q. At any point did he say put your hands behind your back?

A. Nope.

Q. And you don't know where they grabbed your arms, you just know that they were pulling very forcefully?

A. They were all over me, so I couldn't tell you what was where at what time.

Q. Okay. At some point did they actually get handcuffs on you?

A. Yes, ma'am.

Q. Were your arms in a position -- a comfortable position when they had your arms

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handcuffed?

A. No.

Q. Okay. What position were your arms in at that time?

A. They were normal position for handcuffing behind your back, but the cuffs were pulled tight, really tight, around my wrists, and my shoulders were really sore at that point. And I'm sorry, I may have lied today. I did say one cuss word that day.

Q. What cuss word was that?

A. I just recalled, I called Officer Bowling a bad-ass.

Q. And this was after you were handcuffed?

A. Yeah. Because we were walking toward the cruiser and he was shoving me, and he was shoving me so hard I wasn't having time to take steps, and I said could you please let me walk. And he had me -- the handcuffs were behind my back -- it actually hurts my shoulder to put -- he had -- the handcuffs were behind my back and he had me by the chain between the handcuffs, and at that point, he grabbed the

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chain and jerked up real hard and he said, well, walk, then. And I said, boy, you're one of them bad-ass cops that let your badge go to your head, aren't you? I'm sorry. I totally forgot that I said that to him.

Q. At any time did you tell the officers that you had a sore shoulder?

A. No. I didn't actually mention it to -- in the words that I have a sore shoulder. I said you're hurting me several times, over and over again, as they were

handcuffing me. I didn't come out and say you're hurting my shoulder.

Q. Okay. At this point, you weren't concerned because you had previously had a surgery on your shoulder?

A. What do you mean by I wasn't concerned?

Q. Did you let the officers know that you had previously had a surgery on your shoulder?

A. No.

MR. STATON: Objection. Well, no

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objection. Go ahead.

BY MS. JUSTICE:

Q. You just told the officers they were hurting you?

A. Yeah. I don't think in the middle of all that chaos I'm going to stop to say, hey, I had surgery on my shoulder.

Q. So they get your hands handcuffed behind your back and they're pushing you toward the cruiser; is that what you said?

A. Well, if you could call it walking, they were walking me, but they were shoving me.

Q. Shoving you toward the cruiser. And you said this was Officer Bowling, correct?

A. Yes.

Q. What happened to Officer Diekman at this point?

A. He was still walking beside me.

Q. And you said Officer Bowling -- did he have any hand on your body at this point as he was pushing you or shoving you toward the cruiser?

A. At one point he did put his hand back on my shoulder.

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Q. And at what point was that?

A. About the time he pulled up on the handcuffs --

Q. Okay.

A. -- and shoved me again and said, well, walk, then.

Q. How far away from the van was the cruiser?

A. Probably two or three car lengths.

Q. Were you saying anything to Officer Bowling at this time?

A. Not until he jerked up on the handcuffs and shoved me, and that's when I proceeded to say what I said.

Q. I thought you said earlier that you said something about not being able to walk or – and he said, well, walk, then.

A. Well, that -- you said after that point, right?

Q. Okay.

A. Up to -- okay. As he was shoving me and had ahold of the handcuffs, Bowling had ahold of me. I said can you please let me walk, and he pulled up on the handcuffs and shoved me with his other hand and said, well, walk, then.

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And that's when I looked at him at that point and I said you're one of them bad-ass cops that lets your badge go to your head.

Q. Was there any other conversation between the two of you before you arrived at the cruiser?

A. No.

Q. Did Officer Diekman say anything else to you as you were walking toward the cruiser?

A. I don't recall Diekman saying anything.

Q. Did Officer Diekman touch your body at any other point?

A. No. From the time they got the cuffs on me, Bowling took control pretty much. I take that back. I think Diekman might have placed his hand on my head, you know when they're doing that when they put you in the cruiser (indicating).

Q. Okay. When Officer Diekman put his hand on your head to put you into the cruiser, did you find that offensive in any way?

A. (Shaking head from side to side.) He was just, I guess, lowering me into the

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cruiser. I think they do that so you won't hit your head maybe.

Q. I think so. From what I can tell – we'll go through the list of the uses of force that the officers did. First, Officer Bowling grabbed you by the arm, the bicep area, then he grabbed you by the other arm at some other point, but you're not sure what part of the arm it was, right?

A. (Nodding head up and down.)

Q. So those are the first two uses of force, correct?

A. Yes.

Q. Then he shoves you toward the vehicle, the van, correct?

A. Yes. He had moved his hands in between this. I mean, his hands were never in one place.

Q. This first grab, you told me earlier that hurt, correct?

A. Yes.

Q. The second grab of your other arm, did that hurt?

A. Yes.

Q. When he shifted his hands while he

[p.178]

was shoving you, did the shift of the hands hurt?

A. I guess when he -- I can't take you moment-for-moment, movement-for-movement when it hurt, when it didn't, because it happened fastly, quickly, chaotically. So I can't say that every time he moved his hand, yeah, it hurt me.

Q. Okay. When he shifted his hands, did he grab you at any point again as he did the first time he grabbed you?

A. Yes.

Q. Where else did he grab you?

A. He was grabbing me by the shoulder from behind, grabbing me by the bicep, kind of pushing me from the waist in the back.

Q. Other than the bruise on your bicep, did you have other bruises from where Officer Bowling put his hands on you?

A. Yes, I believe I did.

Q. Could you tell me where you had other bruises?

A. I think on my other arm.

Q. Do you know on what part of your other arm you had a bruise?

A. I'm not exactly sure, honey.

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Q. Did you have a bruise on your shoulder from where he grabbed you?

A. No.

Q. Did you have a bruise on your waist from where he shoved you?

A. No.

Q. So he shoves you into the van face forward, so that shove is a separate use of force. Did you have any bruises on your frontal area, your chest or your thighs

or your legs or your knees, from where you were pushed into the van?

A. I don't think so, but my chest was pretty sore that day, that evening.

Q. Then Officer Bowling shoved your head into the hood of the vehicle (indicating). Did you have any bruises, scrapes, abrasions, or anything like that on your face? A. My face was red, but no permanent bruises. You have to understand, too, in between this happening, I spent hours sitting in a police station, so there was a point there when I had no chance to go look in a mirror.

Q. Did you have any bruises the next

[p.180]

day on your face?

A. No.

Q. Any scrapes or abrasions on your face?

A. No.

Q. So then he pulls and jerks your arms behind you, correct?

A. Yes.

Q. Did you have bruises on your arms from where he was grabbing you to jerk your arms back?

A. I can't tell you exactly at what time or where the bruises come from. Can I say that?

Q. Okay. So the bruises -- you said something earlier about the bruise -- you believe he first originally grabbed you right by the bicep, because that's where your bruise was?

A. And then I think there might have been a couple times that he grabbed me in the same spot over and over again.

Q. Okay.

A. I mean, because that arm was really sore the next morning, in the a.m. hours, and there was a really large black, green, blue

[p.181]

bruise there.

Q. Okay.

A. So I'm pretty sure I got grabbed there several times.

Q. It wasn't just that original first grab that gave you the bruise you think, but you're not sure?

A. I'm not sure.

Q. Okay. And then Officer Diekman puts his knee in your back. Did you have any bruises or abrasions on your back from where you had a knee in your back?

A. Not that I know of. I didn't come home and strip down and let somebody look up and down my body.

Q. Right.

A. I mean, what I could see is what I noticed.

Q. Was your back sore the next day?

A. My whole body was sore the next day. I felt like I had been in a fistfight.

Q. Specifically, though, did your back hurt from where Officer Diekman had put his knee in your back?

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A. Yes, my back hurt the next day.

Q. And you believe that's from where Officer Diekman put his knee in your back, correct?

A. Yes, ma'am.

Q. Okay. Did you have any -- then the officers put the handcuffs on you. Did you have any bruises or abrasions around your wrists where the handcuffs were?

A. Yes, ma'am.

Q. What kind of bruises and abrasions did you have around your wrists?

A. Just red marks and scrapes.

Q. And how long did the red marks last?

A. Through the next day. Quite, quite some time.

Q. And where were the red marks exactly, if you could tell us?

A. Here (indicating), around the wrists.

Q. All the way around your wrists?

A. Yes. I mean, it was in spots where it was scraping the worst.

Q. Okay.

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A. Because at some point when we had got to the police station, I had asked him to loosen them and he wouldn't loosen them because he thought I had called him a fat-ass instead of a bad-ass.

Q. Did he actually say he wasn't going to loosen them because he thought you called him --

A. Yes, he did. I said can you loosen the handcuffs because they're too tight and they're hurting me, and he said no. If I remember correctly, you called me a fat-ass. I said I called you a bad-ass.

MR. STATON: Was that Bowling?

THE WITNESS: Yes, it was. And upon entering the police station before we got to that point, when he

took me in the back door before you -- there's two doors. You go in the back door and then you got to go through the security code door. I looked at him and I said it's not right the way you treated me, and he said I'll treat you any way I want to treat you.

BY MS. JUSTICE:

Q. After the officers put the handcuffs

[p.184]

on your arms, did you tell them immediately that they were too tight or anything like that?

A. Yes, I did.

Q. Which officer did you tell the handcuffs were too tight?

A. Bowling.

Q. And when did you tell him that the handcuffs were too tight?

A. On the way to the cruiser.

Q. And you said you can't see behind you, but are you aware of whether or not Officer Bowling checked to see if the handcuffs were too tight?

A. He never took a second to see if I was.

Q. Okay. When you were placed in the cruiser, did your hands remain handcuffed behind your back?

A. Yes.

Q. Did the handcuffs cause you any other kind of discomfort or injury that you haven't already told us about?

A. I don't believe so.

Q. So then the officers drive you to the police station.

[p.185]

First, before we get there, did the officers ask you --

A. The officer.

Q. Okay. Did Officer Bowling ask you about what's going to happen to your kids while you were gone or anything like that?

A. No. They left them with my mom, I guess, I'm assuming. They didn't care. My kids were standing there crying and screaming watching me get treated this way the whole time, because they were standing in the parking lot. And when he was walking me to the cruiser, in between me and him having our little words over him shoving me, I was trying to calm my children down, looking over and saying calm down, boys, it'll be okay, stay with Nanny, that kind of thing. And it was very upsetting for me for my children to see me in that situation. I mean, that's got to be one of a mother's worst dreams is to have your children see you thrown against a van and your hands put in handcuffs and

arrested and put in the back of a cruiser. But my mother was there, so I wasn't

[p.186]

concerned about my children. I knew my mother would get them.

Q. So other than this conversation about him being a bad-ass, did the two of you exchange any other words before you were placed in the cruiser?

A. No, ma'am.

Q. And was this a cruiser that Officer Bowling was actually driving?

A. Yes.

Q. Did you immediately leave for the police station at this point?

A. I don't recall if there were a few minutes in between that he might have talked to another officer or something.

Q. Was any other officer riding with Officer Bowling?

A. No, ma'am.

Q. When Officer Bowling got into the cruiser, did he say anything to you?

A. I don't recall. I think I was going off at that point about how it wasn't right the way he treated me, but I don't recall what he might have said or if he said anything.

Q. So then Officer Bowling takes you

[p.187]

down to the police station, correct?

A. Yes.

Q. Was this the Franklin Police Department?

A. Yes, ma'am.

Q. Did Officer Bowling help you out of the cruiser?

A. Yeah.

Q. And how? In what way did he help you out of the cruiser?

A. Grabbed me by my arm and stepped me out of the cruiser.

Q. Do you know what part of your arm he grabbed at this point?

A. The upper, the upper arm.

Q. Do you recall whether or not that grab hurt?

A. I don't recall. I mean, at this point, I'm so sore and so upset, I just don't recall.

Q. Did Officer Bowling lead you into the police station?

A. Yes.

Q. Did he lead you in by your arm or by the handcuffs?

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A. I don't recall, honey, I honestly don't. I can't remember exactly where his hands were at every point that day.

Q. You understand you've made a claim against the officers for use of force, correct?

A. Yes, ma'am.

Q. So that's why we have to go through every use of force.

A. Right. I just -- what I'm trying to say is I don't remember where his hand was at every minute of that day.

Q. Were you in any way offended when he grabbed your upper arm to get you out of the car and lead you?

A. No. At that point, we had pretty much come to a, I guess you could say, stubbed-up position.

Q. Was Officer Bowling the officer that booked you into the jail?

A. Yes.

Q. What did that consist of?

A. He took me in the back door, we made the statements I stated earlier, he took me in the other back door, he took me in, sat me on a bench, handcuffed me to the bench, was doing

[p.189]

paperwork, the whole nine yards, and at some point I said are you going to give me a bond and let my husband come and get me, because that's what they do in Franklin since they don't have a jail. And he said no. He said I think I'm just going to take you to Warren County. I said why do you have to take me to Warren County? He said just because I want to inconvenience you. So he did some paperwork down there and --

Q. So did he actually take you to Warren County?

A. Yes, ma'am.

Q. What happened when you went to Warren County?

A. They booked me in there.

Q. To the jail?

A. Yes.

Q. Is there a jail for females in Warren County?

A. I actually never made it back to the jail. By the time they got me into the holding cell, my husband was already on his way to come get me out.

[p.190]

Q. Okay. But Officer Bowling, he took you to Warren County and essentially dropped you off and let them handle it?

A. Yes. Took me into the booking room and turned me over to the other officers.

Q. Okay. What were you charged with?

A. Honestly, I don't remember the exact charges. I don't. Do you know?

Q. Yeah. And I'm getting ready to mark this as Defendants' Exhibit D. This is the incident report. It's a public record.

A. Okay.

Q. And it just is the police report.

A. It's just been so long, I don't remember.

(Thereupon, Defendants' Exhibit D was marked for purposes of identification.)

BY MS. JUSTICE:

Q. This is Defendants' Exhibit D (providing). This is the police officer's incident report, if you want to take a few minutes and look over that.

A. Disorderly conduct. Oh, yeah.

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(Pause in proceedings.)

THE WITNESS: It says here that Bowling was in the bedroom with me.

MR. STATON: Yeah. Just read it over before you say anything.

(Thereupon, an off-the-record discussion was had.)

BY MS. JUSTICE:

Q. LaDawnya, did you have a chance to look over the incident report?

A. Yes, ma'am.

Q. Okay. Do you remember now what you were charged with?

A. I guess disorderly conduct.

Q. Do you remember any police officer ever telling you what you were charged with?

A. They probably did. Like I said, I'm just getting older. My memory's getting short.

Q. And these charges were eventually dismissed, correct?

A. I think so, on a time thing.

Q. Speedy trial?

A. Yeah, something like that.

Q. Do you know how long -- I think I asked you that before -- between the time that

[p.192]

you were charged and the time that these charges were dismissed?

A. I don't remember, honey. I don't remember if it was days, weeks, months.

Q. Actually, your complaint indicates, paragraph twenty-seven, that the charges were dismissed on January 17th, 2003.

A. Guess it was months, huh?

Q. You didn't have to wait in jail all this time, did you?

A. No. Like I had said, my husband was on his way to get me out before I even come out of the holding cell.

Q. So you didn't actually spend any time in real jail, correct?

A. Nope.

Q. You were actually in the holding cell?

A. Yes.

Q. How long were you in the holding cell?

A. A couple hours.

Q. Couple hours? And did your husband have to bond you out?

A. Yes.

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Q. Do you know how much your bond was?

A. No, I don't exactly remember. I think it was two something, somewhere around there.

Q. Two something, you mean --

A. Two hundred and something. I'm sorry.

Q. Okay. That's okay.

A. Somewhere in that vicinity.

Q. Did you have a hearing as a result of this incident?

A. I don't remember if we ever did have a hearing. Yeah, at some point we had to have, because my husband's bond got released back or something.

Q. During this hearing, do you remember Mary Zolecki testifying?

A. Wasn't that the suppression hearing?

Q. Okay.

A. So it wasn't actually a criminal hearing. You're talking about the suppression hearing, but it wasn't actually the criminal hearing. That was a suppression hearing.

Q. So Miss Zolecki testified at the

[p.194]

suppression hearing, but this was related to the charges against you, correct?

A. Yes. I'm sorry. I was thinking of a criminal hearing for me, but --

Q. Your case never went to trial because it was dismissed, correct?

A. Exactly.

Q. In your complaint, you indicate that the City of Franklin intimidated Mary Zolecki to keep her from testifying in your trial. Do you know what -- what do

you mean by the City of Franklin intimidated Mary Zolecki?

A. I can't say that they personally intimidated her. I mean, I don't know how she feels, but --

Q. I'm just asking because it's in your complaint.

MR. STATON: Well, objection. She didn't prepare the complaint, but if you can answer the question --

THE WITNESS: There were a couple occasions when I spoke with Miss Zolecki that she felt that the police were harassing her.

Q. What occasions were those?

A. I think I seen her in the Dollar

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Store one day and then I seen her at my brother's apartment.

Q. Did you know Mary Zolecki before this August 16th, 2000 incident?

A. Never met the woman in my life.

Q. Did you know what apartment she lived in?

A. Had no clue on that day. After all this happened, I come walking up to my brother's apartment one day and then she speaks to me, but --

Q. Okay. She was a resident of the apartment complex in which your brother lived, correct?

A. Yes, ma'am.

Q. Okay. Did you ever go to Mary Zolecki's apartment after this occurred?

A. Yeah, I think I did one time.

Q. Do you know where that apartment was in relation to your brother's apartment?

A. It was -- it was a connected building on -- right next to my brother. It's all one complex, but it was in the next hallway. You had to walk outside and around to the next actual building.

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Q. Did Mary Zolecki tell you what she had seen that day?

A. No. She wrote it in a statement that I took to Roger.

Q. So when she came up to you, approached you at your brother's apartment, she didn't tell you what she had seen?

A. Well, she was awed and surprised at what had happened, but she didn't go into details about everything until we -- I got a chance to actually sit down and talk to her and then she said -- I said, you know, if you seen what happened, can you, you know,

write it out for me, and she said yeah. And so she wrote it out for me and we continued to talk about it and, yeah, at that point I kind of got a clue, but until I read her statement, I didn't actually hear everything she had seen, but --

Q. Okay. When was it after the August 16th, 2002 incident that Mary Zolecki approached you?

A. I think it was the next day.

Q. August 17th?

A. She was standing on her balcony

[p.197]

smoking and I pulled up at my brother and my mother's house.

Q. Do you know what floor Mary Zolecki's apartment was on?

A. Second floor.

Q. So she was standing on her balcony and you pulled into your brother's apartment. If you could describe for me what her view was of your brother's apartment from --

A. She can't actually see my brother's apartment. She can see the front doors that lead into his complex.

Q. From her balcony?

A. From her balcony. She can see the parking lot, the foyer, the patio, everything from her balcony. She can see the whole front section of the apartment complex.

Q. And from the front section of the apartment complex, you can see her balcony, correct?

A. Yes.

Q. And you saw her up there when you pulled in that day, the next day?

A. Yes.

Q. Okay. Did she like yell down to

[p.198]

you, hey?

A. Yeah. She kind of just said hey, you know. She had spoke to, I guess, my brother once or twice before the incident to say hi as people do.

Q. Okay.

A. She said she had noticed my children a few times.

Q. And she told you this after you started a conversation with her?

A. Yeah, after I had started talking to her.

Q. So she's up on her balcony smoking a cigarette and she sees you pull in and she just says hey, how you doing, that kind of thing?

A. She kind of got the awe and the surprise, hey, you know what, you know, the – the way people do when they're like --

Q. Surprised to see you after just seeing you arrested the day before?

A. Yeah, just seeing you arrested and what you went through, that kind of –

Q. So she was talking to you from her balcony then?

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A. Yes.

Q. At some point, did she come down and talk to you or come to your brother's apartment?

A. No. She hollered for me to come over.

Q. So you went over to her apartment?

A. Yes. I didn't go in her apartment that day. I stood below the balcony and talked to her.

Q. Oh, okay. You talked to Mary for a little bit. At that point, she told you –

A. Yeah.

(Thereupon, the Notary interrupted the proceedings.)

BY MS. JUSTICE:

Q. At that point, she says she witnessed what happened?

A. Yes.

Q. She probably said something like I saw what happened yesterday, right?

A. Not directly right out with that. At first it was the ooh, the aah, wow, I can't believe, you know, that kind of thing.

Q. Right. So she doesn't tell you what she had actually seen that day, right?

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A. She told me, you know, I seen what they did to you. That was really mean. I couldn't believe that. One of the comments she had made was I used to live in Illinois, and I've seen crackhead hookers treated with more respect.

Q. Okay. That's a different story. So did you actually meet up with Mary a different day to talk about this event?

A. I actually met up with her a different day to get her statement on paper.

Q. Did you tell her when she was up on her balcony, hey, I'd like to get your statement?

A. Yes.

Q. Okay. I see. Do you know what day you actually --

A. I didn't tell her, I asked her would you be willing to be involved.

Q. Right, right. And she agreed, correct?

A. Yes.

Q. What date did you get Mary Zolecki's statement?

A. I don't remember, honey. I think it's dated on the statement that she wrote.

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Q. Okay. You said that you were approximately thirty to forty feet away from Sarah when you told her that statement.

A. Yes, ma'am.

Q. And when Officer Bowling started shoving you toward the van, correct?

A. Yes, ma'am.

Q. And he shoved you a couple of feet to the van, correct?

A. Yes, ma'am.

Q. How far away would you estimate that Mary Zolecki's apartment was from the van?

A. She was right in the middle --

Q. Okay.

A. -- at a triangular point. The van's here, Mary's here, Sarah's here (indicating). So, you know, you could say it was a triangular -- she had a view to her -- I guess you would say left of me and the van aspect and a view to her right of Sarah.

Q. Okay. I see. Would you say that Mary was as far away from the van as Sarah was, then?

A. No.

Q. Okay. Half the distance, greater

[p.202]

than?

A. I'd guesstimate she was probably – she was probably, I would say, a quarter of the way away from me and three-fourths of the way away from Sarah.

Q. Okay. I see. So sort of an oblong triangle?

A. What do you call them, a right-angle triangle?

Q. Yeah. I see what you are saying. Are you aware of any reason that Mary Zolecki would have to lie to you?

A. No. I've never met the woman before.

Q. Are you aware of any reason Mary Zolecki would have to lie against the Franklin Police Department?

A. No.

Q. Mary Zolecki didn't happen to mention to you in her conversations that she had previously made false statements on the witness stand, had she?

A. No.

Q. Did she mention to you that she had had various run-ins with the Franklin Police

[p.203]

Department when she talked to you?

A. Nope. After I know she had a conversation -- or run-ins, but I don't remember her mentioning anything before, no.

Q. After you had gotten the statement from Mary, when did you next talk to her?

A. I'm not sure. I was in and out. Like I said earlier today, I was in and out of that apartment all the time with my mom, so there were several occasions when she would be standing on the balcony smoking and I

would be going in to Mom's and I would stop and say hi and we had conversations. My second oldest son actually got to be -- befriended her.

Q. Jake?

A. Yes. So she loved Jake. She thought he was a really cool kid, so a lot of the conversations were about him.

Q. You indicated earlier that a couple of occasions, she was actually at your brother's apartment; is that correct?

A. No. I think she came in my brother's apartment maybe one time. She wasn't a person to come and visit, no.

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Q. Do you recall when she came to your brother's apartment?

A. I think it was to tell him something or drop off something. She didn't actually come in even.

Q. Okay.

A. That was -- I don't think -- she's never been in my brother's apartment, I don't think.

Q. Okay.

A. I mean, I didn't live there.

Q. So when you had other conversations with Mary Zolecki, it was sort of the balcony?

A. Yeah. It was always the balcony, me standing below the balcony looking up at her.

Q. Okay. How did Jake end up befriending her?

A. Same way, she would talk to him as he walked by. She was just one of them people that liked to talk, liked to say hi, liked to befriend people.

Q. Did Jake ever go over to her apartment to visit her?

A. Yeah, he would go over and sit with her, I guess, and play cards or watch movies,

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that kind of thing.

Q. Is Miss Zolecki an elderly lady?

A. Yes.

Q. Okay.

MR. STATON: She's a what?

THE WITNESS: Elder. She's not elderly. She's older than me.

BY MS. JUSTICE:

Q. Okay.

A. What, maybe fifty-something?

MR. STATON: That's not elderly.

THE WITNESS: That's elder than me. That's why I said elder, I didn't say older. Give me credit.

BY MS. JUSTICE:

Q. So she's just older than you, she's not actually elderly, right?

A. Elder. I think elder is more respectful than older.

MS. JUSTICE: Elderly tends to mean someone that's grandfatherly, that type of thing.

MR. STATON: Like seventies or eighties.

MS. JUSTICE: Yeah, a person old enough to retire.

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THE WITNESS: I always thought it was more respectful to say someone was elder than you than older than you. Okay, so correct my English in a deposition.

BY MS. JUSTICE:

Q. So Jake wasn't going over there sort of like a voluntary, you know, take care of an elderly old lady type of thing?

A. No, no. It was a friendship.

Q. Did Jake make friends with Mary before this occurred or after?

A. He may have spoke to say hi before, I think, but the friendship didn't actually come about until afterwards.

Q. Okay.

A. I wouldn't let my children go around someone I didn't know.

Q. Right. So was Jake upset, then, when Nick moved out of that apartment complex so that he couldn't see her anymore?

A. Jake was upset for more reasons than that. He had a coupl[illegible] buddies that lived there, too, so yeah.

Q. But other than the conversations you

[p.207]

had with her on the balcony, this was not a friend that you would go visit her apartment or something like that?

A. No, no, not at all.

Q. Okay. You said you knew Officer Bowling the day that this all occurred; is that correct?

A. Yes.

Q. How did you know Officer Bowling?

A. Well, I've lived in Franklin for ten years, and he's a lieutenant, and I've had quite a few run-ins with my husband bringing the police to my door -- my exhusband, I'm sorry. Correction.

Q. And your exhusband would bring the police to the door because of custody of the two older boys, correct?

A. Yes.

Q. And so when he would bring the police, it would be Officer Bowling usually?

A. Well, not always, but, yeah, that's how I got to know him, because like I said, he's a lieutenant, so there were sometimes when other officers could be there and he would show up because he is a lieutenant.

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Q. Okay. When you say quite a few occasions, do you have any estimate? Less than ten, more than ten?

A. There is no way I could give you even an estimate, because over an eight-year period, my exhusband was just one of those.

Q. So would you say that the professional relationship between you and Officer Bowling became amicable over time as your husband kept calling him and making him come to your house?

A. By professional relationship, you mean as far as him coming to my house as a police officer?

Q. Yes, correct.

A. And can you please refresh my memory with amicable?

Q. Cordial, you talk, have a conversation.

A. No, no, no personal friendly conversations. It was always a legal thing.

Q. Okay.

A. I mean, if I seen him out in the store, I might raise my hand and say hi, Officer Bowling, that kind of thing, but I wouldn't stop

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and have a conversation about everyday life.

Q. Right. Over the course of these incidents where your husband would bring the police to your door, or exhusband, did you learn any other officers' names?

A. Yeah. Stevie Dunham, Officer Woods. Also, Stevie Dunham, we also knew him because he would come to the Pee Wee football field and bring his big German shepherd dog, and one of my boys hung around with one of his boys.

Q. But Officer Bowling and Officer Woods, you got to know their names because of coming to your door, right?

A. Well, also seeing Officer Woods around, like Officer Bowling, and Franklin is a small town, and I lived across the street from the police station, so --

Q. Prior to this incident, did you know Officer Diekman?

A. No.

Q. Did you know Sergeant Whitman?

A. No. I think Whitman had come to my house like once or twice with the whole exhusband thing. I knew him to recognize him as,

[p.210]

yeah, I've seen him before, but not by name.

Q. Do you know what role Sergeant Whitman had in your arrest on August 16th, 2002?

A. He was involved in everything. I mean, he was just -- he -- was he not the officer that first come to the door? I'm not sure.

Q. I couldn't tell you.

A. I'm not sure.

Q. Okay. But we know that it was Officer Bowling and Officer Diekman that actually arrested you, correct?

A. Yes.

Q. Okay. Had you ever been arrested by City of Franklin Police Department before August 16th, 2002?

MR. STATON: Objection. You may answer.

THE WITNESS: Yeah, I believe I have. I think we discussed it earlier.

BY MS. JUSTICE:

Q. And this was the incident that occurred back in 1994 or 1996?

A. Yeah, that and I think I got arrested for DUS.

Q. And DUS is driving under suspension,

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right?

A. Yes, ma'am.

Q. And the Franklin police officers did that?

A. Yes.

Q. When they arrest you for DUS, do they actually physically arrest you or give you a ticket? How do they do that?

A. I think the one time that it happened, I think it was Officer Dunham that done it, and he didn't even handcuff me, he just took me down to the police station, wrote me a ticket, let me go home.

Q. And so that -- were you offended by anything that Officer Dunham did that day?

A. No.

MR. STATON: Objection. Which day?

BY MS. JUSTICE:

Q. The day that he arrested you for the DUS.

A. For the DUS.

Q. Officer Dunham wasn't involved on August 16th?

A. No. Officer Dunham wasn't even there that day, I don't think.

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Q. Did you have an incident where the Franklin police officers had to arrest you a year prior to the August 16th, 2002 incident?

A. I have no clue.

Q. I have a criminal damaging charge and I have a DUS in Franklin and the charges that got dismissed.

(Thereupon, Defendants' Exhibit E was marked for purposes of identification.)

BY MS. JUSTICE:

Q. I have here an incident report from August 3rd, 2001.

A. Oh, I'm sorry. That might be from Sarah Kirby?

Q. Correct. In which it's alleged you assaulted Sarah Kirby (providing), if you want to take a look at that.

A. I already know. I don't need to look at it.

(Thereupon, an off-the-record discussion was had.)

THE WITNESS: Okay.

MR. STATON: Do you need this back?

MS. JUSTICE: No. Is it okay to ask?

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THE WITNESS: Yeah. I've already seen those.

MR. STATON: Yes.

BY MS. JUSTICE:

Q. On this incident, who called the Franklin Police Department?

A. Sarah Kirby.

Q. Sarah Kirby. Was she with her mother, Bertha Kirby?

A. No. Her mother wasn't there at that time.

Q. Okay.

A. Her mother showed up, but she wasn't there during the incident.

Q. Where were the two of you when this incident occurred?

A. Inside my brother's apartment, my brother and Sarah Kirby's apartment.

Q. At this time, your brother was still seeing Sarah Kirby?

A. They were living together.

Q. Did you get into an argument with Sarah Kirby?

A. Not actually. My brother was arguing with her, and he asked me to come and get

[p.214]

him. I showed up that day to come pick my brother up, got in between them fighting.

Q. So you got in between Sarah arguing with Nick?

A. Yeah.

Q. Do you know what they were fighting about?

A. I actually couldn't tell you the details to this day. They were fighting, arguing. My brother called, asked me to come and get him. I come in, they're arguing, she throws a phone and hits me in the stomach and I'm pregnant, so I mugged her in the face and shoved her away from me.

Q. So the Franklin Police Department responded to Sarah Kirby's call?

A. Yes.

Q. Do you know which officer responded?

A. I don't remember who was there that day. Maybe Bowling might have been there that day.

Q. Troy Shane Lauffer. Do you know Troy Shane Lauffer, L A U F F E R?

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A. I think a couple cops came out that day, because I think Bowling did actually show up that day.

Q. Do you recall seeing any other police officers you know their names?

A. No. I don't think Stevie Dunham come that day.

Q. And so that day, did the police officers actually arrest you and take you into custody?

A. Yes.

Q. Did they put you in handcuffs?

A. Yes.

Q. Was there anything about the way they arrested you that day that was offensive?

A. No. I turned around and let them put the handcuffs on me.

MR. STATON: (Indicating.)

THE WITNESS: Yeah, I thought he was there that day.

BY MS. JUSTICE:

Q. Did Officer Bowling say anything to you that day that would indicate that he had any ill will toward you or dislike of you?

A. No, no.

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Q. Did Officer Bowling act in any way disrespectful to you that day?

A. No.

Q. And you indicated earlier that those charges were dismissed?

A. Yes. It was self-defense. I was pregnant. She hit me in the stomach with a phone, come at me.

Q. So the police department dismissed the charges; is that correct?

A. The courts did.

Q. The courts did?

A. Yes.

Q. Okay. Was there a hearing?

A. Yep, I believe there was.

Q. Was Sarah Kirby ever charged with anything arising out of that August 3rd incident?

A. No.

Q. Did you ever file charges against Sarah Kirby for throwing a phone at you?

A. I tried to. They wouldn't let me because she didn't have a mark -- or I didn't have a mark, she did.

Q. And she had marks from you -- you said mugging?

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A. Mugging means I pushed her face away from me like this (indicating) with the forehand (indicating).

Q. And she had marks from that?

A. Her face was red.

Q. Okay. And this was when you were pregnant with Aleeanna?

A. Yes.

Q. Everything turned out okay with that?

A. Yes.

Q. Do you know whether or not Sergeant Whitman or Officer Diekman had any involvement in that incident?

A. That day with Sarah?

Q. Right.

A. No. I can't tell you every cop that pulls up at every scene of every crime.

Q. To the best of your knowledge, you just don't know?

A. I don't know. Like I said, I thought Officer Bowling was there and then he showed me the paper and it shows he was there.

Q. Okay. Other than the arrest for the DUS by Officer Dunham, the arrest in 2001 by

[p.218]

Officer Lauffer and Officer Bowling, were there any other contacts you had with the Franklin Police Department?

A. No, ma'am. Well, my husband, my exhusband --

Q. Okay, right.

A. -- coming up with him to witness that I wouldn't give him the kids.

Q. And, of course, the incident in 1994 -- or '96, sorry. In 2001, did the Franklin Police Department call you to tell you that you were under a warrant?

A. Do you honestly -- do you honestly expect me to say, yeah, they called me, I remember it?

Q. You don't recall?

A. I have no -- I don't recall it.

Q. You don't recall whether or not a police department called your person?

A. To say I had a warrant on me?

Q. Yeah.

A. For what?

Q. For passing bad checks in Lebanon.

A. (No response.)

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Q. You don't recall this ever occurring?

A. I remember going to court in Lebanon over the check, yeah, but I don't remember someone calling me saying, hey, you got a warrant, you need to go to court. Since when do they do that?

Q. I apologize for asking you, if it seems strange. I just know that if I received a call from the police department, I would probably remember. In June, 2002, did you have another contact with the Franklin Police Department when your son Jerrid stole a little girl's bike?

A. What's that got any relevance to this?

Q. No. Contact with the Franklin Police Department. You have sued the Franklin Police Department.

A. Yes.

Q. Okay. Any part of that contact – it has nothing to do with your son. This has nothing to do with your son. It has to do with contact with the Franklin Police Department.

A. Okay. I get defensive when it comes

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to my children.

Q. Was there any part of that contact with the Franklin Police Department that you thought was unprofessional?

MR. STATON: Objection. You may answer it.

THE WITNESS: No, not that I can remember.

BY MS. JUSTICE:

Q. Do you remember what officer responded to that?

A. I have no clue, no clue.

Q. In September, 2003, did the Franklin Police Department respond to another call from Sarah Kirby against you, do you recall?

A. Not that I recall, unless that was the day she was standing on my front porch crying because my brother didn't want to talk to her and she may have called the police.

(Thereupon, Defendants' Exhibit F was marked for purposes of identification.)

BY MS. JUSTICE:

Q. Here is an incident report dated for November 20th, 2003 in which Sarah Kirby called the police on you for harassing her at a

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laundromat (providing).

A. Oh, my God. Sarah Kirby was at the laundromat and I pulled up to do my laundry. She seen me walk in the laundromat and called the police.

Q. So you recall that incident?

A. Yes. I went to jail that day because I had a warrant for not paying my fine, and I had to pay my fine to get home.

THE WITNESS: I'm sorry, Roger. I should have handed that to you. I'm sorry.

MR. STATON: That's all right.

BY MS. JUSTICE:

Q. Do you recall what Franklin officer responded to that call from Sarah Kirby?

A. I think it was a little short chubby red-headed guy. I knew him by sight, but I don't remember his

name. I hate referring to these guys like this. Don't ever let them read this stuff.

Q. You had seen this officer before in the past?

A. Yeah. He's come to my door for my children, for my exhusband, that kind of thing. He's a really nice guy.

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Q. Okay. Was he the only officer to respond to that incident?

A. I can't remember if one or two come that day. I think it might have been two. And he was like, oh, I understand. He said it's silly, but he said you do have a warrant for not paying your fine. I said I know. So he took me down, I paid my fine and then went back to the laundromat and did my laundry and Sarah was gone.

Q. Did they file any charges against you for Sarah Kirby's complaint that day?

A. No. It was ridiculous.

Q. Did you ride in the officer's cruiser to the police department or is the laundromat within walking distance, that kind of thing?

A. No. I rode in the cruiser. My mom was with me, so she drove my car.

Q. So when you left the police department, you --

A. She actually lied to the cops that day and told them she had a protection order against me, and there was no protection order against me.

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Q. But you had a ride from the police department if you needed to get back to the laundromat?

A. Yeah. My mom waited outside, because I had the money to get me out of jail right then and there, so --

Q. Okay. Was there anything that you thought the Franklin Police Department did that day that was unprofessional?

A. No. Like I said, that little red-headed guy is just a nice guy, he really is.

Q. Okay. Other than the incident that occurred on August 16th, 2002, do you have any reason to believe that Officer Bowling didn't like you or wished you ill will?

A. After that incident, yes.

Q. What --

MR. STATON: Well, no. What was the --

THE WITNESS: Before the incident, no. Up to that point of the incident, no.

BY MS. JUSTICE:

Q. Have any actions of Officer Bowling after that incident or before that incident but not including that incident given you any reason

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to believe that Officer Bowling had ill will toward you or disliked you?

A. Yes, ma'am.

Q. Okay. Could you please tell me what those incidents are?

A. Well, it took three cruisers to pull me over one night for a broken taillight. I took my brother to work one day at Burger King in Springboro. I seen Officer Bowling in the building. He seen me. At that point, he picked up his radio, radioed Stevie Dunham in Franklin, and told Stevie Dunham when I got into Franklin, to pull me over. Stevie Dunham admitted it to me, that's why I know this --

Q. And when Officer Bowling --

A. -- and I got arrested that day for driving under suspension.

Q. How long had your license been suspended?

A. My license are under an SR-22 high-risk responsibility bond, and when my insurance doesn't get

paid, it automatically goes to Columbus, Columbus suspends them.

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It's not so much that my insurance doesn't get paid, but when my insurance gets paid late, then the SR-22 kicks out, Columbus automatically suspends my license, and then until the SR-22 gets back to Columbus, I'm showing up under a driving under suspension because I'm on a high-risk SR-22 bond.

Q. And do you know how this SR-22 –

A. Yes.

Q. -- do you know how that works with the police department?

A. He had no reason to call in my license that day, none whatsoever. I was not driving out of any -- I was not doing anything to cause them to bother me --

Q. Call in your license?

A. -- or call in my license.

Q. Do you know whether --

A. It got to the point, they would just automatically call in my license when they saw me behind the wheel of the car. Officer Woods pulled around the corner, pulled up behind my van, parked in front of my house, not even driving, and ran my plates, and I said don't you have to have a reason to run

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my plates? And he said nope. I can run your plates anytime I want to.

Q. Back to where we were before, the first incident where you said Officer Bowling called Officer Dunham and told him to pull you over, do you know whether or not these SR-22 bonds come through the wire to the police department to let them know anytime someone's license has been suspended?

A. He shouldn't know my license are suspended unless he runs my license.

Q. So to the best of your knowledge, the police department doesn't get a statement letting them know when someone's license --

A. No. I don't think Columbus sends them a letter saying this girl's license is suspended. And the SR-22 is actually issued by the insurance company to Columbus showing that I have the high-risk insurance.

Q. Okay. What is it that triggers the suspension again?

A. When my insurance gets paid late. Because I'm under an SR-22, the insurance company has to report when my insurance isn't paid.

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Q. And the insurance company reports that to whom?

A. Columbus Bureau of Motor Vehicles, and then they automatically put me under suspension.

Q. And so to the best of your knowledge, the BMV doesn't contact the local police departments?

A. Exactly.

Q. So this was the first time Officer Bowling gave you an indication other than August 16th, 2002 that he disliked you or wished you ill will. You want to go to the second one now? You've said --

A. He pulled me over -- I don't – there was so many incidents there for a few months. I got pulled over by three cruisers one night for a broken taillight. Officer Woods ran my plates for absolutely no reason, parked in front of my house.

Q. Three cruisers pulling you over for a broken taillight, how did that involve Officer Bowling?

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A. Bowling was one of the cruisers.

Q. And at that point, was your license suspended?

A. Nope. They apologized and said get your taillight fixed.

Q. And they apologized to you?

A. Yes.

Q. When they apologized to you, I'm not sure how -- what kind of apology? Who apologized to you?

A. One of the officers there said, you know, I'm sorry about the inconvenience. Get your taillight fixed. They didn't issue me a ticket that night, though.

Q. Okay. How many officers actually came up to your window when they pulled you over for the taillight?

A. Three. Actually, when they first pulled me over, the two officers got out and then another cruiser come up. There was three cruisers sitting behind my van.

Q. And two officers actually went up to your window?

A. Yes.

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Q. And then Officer Woods ran your driver's license or your license plate?

A. Yeah. I had pulled up from the grocery store with my daughter, and I was unloading the groceries. My van was parked across the street from my house. I wasn't even behind the wheel of the car. He comes -- like I said, I lived across the street from the police station.

Q. Right.

A. He comes around the corner from the police station, pulls up behind my van, and just runs my plates.

Q. And your vehicle was actually sitting at your house?

A. Yes, across the street, parked on the street.

Q. Is that where you usually park?

A. Yes, either on my side of the street or across the street, depending on which way I'm coming on the street.

Q. How did Officer Woods' actions relate to Officer Bowling?

A. Why did he pull around the corner and just decide to run my plates?

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I mean, to me that was just harassing me, just giving me a hard time.

Q. Do you know that Officer Bowling or Lieutenant Bowling ever told Officer Woods to do that or --

A. I don't know that for a fact, no. No, I don't know that for a fact. I don't know that Officer Woods and Officer Bowling talked and might have talked about me or if they hadn't.

Q. Were there any other incidents that gave you an indication that Officer Bowling disliked you or wished you ill will?

A. No, not that I can recall at this time.

Q. Other than August 16th, 2002, are there any other instances which would give you an indication that Officer Diekman wished you ill will or disregard?

A. I -- no.

Q. Had you ever seen Officer Diekman prior to August 16th?

A. I think I'd seen him before, but I didn't know him.

Q. Do you think he was one of the officers that may have responded when your

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husband, exhusband, called or brought them to your door?

A. Could have been. There was quite often, a few times, that he brought the police when he would pull up --

Q. But you're not sure?

A. -- just to witness that I wouldn't give him the children, but I'm not sure who, when, where, how, but I'm pretty sure I had seen Diekman before.

Q. Okay.

A. Like I said, I live across the street from the police station. We all go to the same Speedway. It's just a small town.

Q. When Officer Dunham pulled you over for a suspended license, did you tell him that he was -- to stop harassing you?

A. Yes, I did.

Q. Did he say anything in return?

A. I said I know Bowling just radioed you and you were waiting for me to pull into Franklin to pull me over, and he responded with I don't care if he asked me to pull you over or radioed me or not, you're driving under suspension and that's not the point.

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Q. You have listed a number of witnesses to the August 16th, 2002 incident. I just need to go through those. Beverly Carpenter, that's your mother?

A. Beverly Combs.

Q. Okay. It's listed as Beverly Carpenter in the discovery. So it's actually Beverly Combs, correct?

A. Yes.

Q. And that's your mother, right?

A. Yes.

Q. Did Beverly Combs witness you being shoved into the van?

A. She witnessed everything.

Q. We've talked about Mary Zolecki. Jakiahya Robinson, that's your son, correct?

A. Yes.

Q. He's fourteen now, correct?

A. Yes

Q. What did Jakiahya witness, Jake?

A. I'm not sure exactly what he seen. I don't know if he seen it from the point of

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grabbing me to the van or if he just seen from the van to the cruiser. I'm not sure. I don't discuss them kind of things with my children and I don't want them involved.

Q. Do you intend to have Jake be a witness in this case?

A. I don't believe so.

Q. Joy Palmer was Nick's girlfriend, correct?

A. Yes.

Q. Is Joy still Nick's girlfriend?

A. No.

Q. Do you know what Joy witnessed on that day?

A. She witnessed almost everything, because she come up the stairs right behind me.

Q. So Joy likely witnessed you being shoved into the van, do you believe?

A. Yes.

Q. Okay. Susan Whitaco, she is -- do you know her?

A. Susan who?

Q. Wait. That might just be someone's name that's listed on something or another, because I have a -- I'm sorry.

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And Bertha Kirby is listed on here. That's just another person --

A. That's Sarah Kirby's mom.

Q. And she wasn't there?

A. No.

Q. Vernon Kirby, Sarah's father?

A. Yes. Vernon Kirby was there. He was there.

Q. Okay. I just have a list of various people as opposed to witnesses. Sorry.

A. Are we going to be here for a while longer?

Q. We're about done. I just need to get through the witnesses.

(Thereupon, an off-the-record discussion was had.)

BY MS. JUSTICE:

Q. You listed Jakiahya and Joy Palmer and Mary Zolecki and Beverly Carpenter, correct?

A. Combs.

Q. I'm sorry.

THE WITNESS: They have Mom listed with my last name.

MR. STATON: Yeah, on the discovery.

BY MS. JUSTICE:

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Q. And, of course, Nick Combs, Charles Combs?

A. Yes.

Q. And as medical witnesses, you've listed Dr. Fedrizzi, of course, and we know approximately what she'll testify to, the examination that she completed of you?

A. Yes, ma'am.

Q. And Julie Dunn, she's your physical therapist?

A. Yes, ma'am.

Q. And Dr. Aivars Vitols, he is your --

A. Orthopedic.

Q. Okay. What about Dr. John T. Farrell?

A. I don't know. See, that's the thing about the Cassano Health Clinic. It's a teaching clinic, so there could be residents present during --

Q. Okay. Actually, his address is listed as 7740 Paragon Road.

A. That is where I had the MRI done. That's the MRI doctor.

Q. Okay.

A. Probably the one that read the MRI.

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Q. And Dr. Davis is with Cassano Health Clinic, correct?

A. Yes. He's also a --

Q. Orthopedic surgeon?

A. -- orthopedic.

Q. On two occasions, you've been arrested for contempt. Did either of those occasions involve Franklin police officers?

A. Contempt?

Q. Correct. February, 1997.

A. Could you explain contempt to me?

Q. One was contempt for failing to pay a ticket.

A. Oh, you mean failure to pay fines? That's what you mean by contempt? Yeah.

Q. Did either of those arrests involve the Franklin Police Department?

A. No, I don't think so.

Q. Okay.

A. I don't remember. 1997, I have no clue.

Q. What about May, 2000?

A. That was most likely Franklin.

Q. Okay. And you don't actually

[p.237]

remember that arrest?

A. No. It was probably failure to pay a fine.

Q. Nothing about that arrest would give you any --

A. What year was that? 2000?

Q. 2000.

A. I don't know.

Q. Nothing about that arrest stands out in your mind as being unprofessional?

A. No.

MS. JUSTICE: If you give me just a couple minutes to go through my notes, I think we're about done.

THE WITNESS: Great.

(Recess taken.)

BY MS. JUSTICE:

Q. Okay. So I just have a couple more questions and you'll be done.

A. Thank you, ma'am.

Q. In your complaint, you allege that you've been denied the opportunity to seek certain types of employment, so I just need to know what types of employment that you've been denied the opportunity to seek.

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I know we talked earlier about the La Comedia job. Are there any other jobs that you decided that you couldn't go after because of your shoulders?

A. Well, I can't be of use to the company that I own as far as labor anymore because it requires lifting your arms up over your shoulders, and a lot of times in the summer, I would go to work with my husband to save us from having to pay someone because to put windows in, you have to do a lot of heavy lifting over your head. The two things I have experience at, it's hard for me to get a job in now. I mean, I have experience in factory work and waitressing.

Q. Let's stick with your husband's job for a second. What is that called again? Do you have a name?

A. Carpenter's Home Improvement.

Q. And rather than paying you, your husband would just use you as opposed to hiring someone else, correct?

A. I'm the joint owner, so I'm not going to pay myself.

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Q. Right. And today does your husband have to hire extra help because he can't depend upon you?

A. Sometimes he hires someone to do those, the cleaning up, the lifting, the loading in and out of the truck, which is usually stuff that I would have done. Sometimes in the summer I would just go to work on those hard jobs with him to save him from having to pay someone for those days.

Q. Do either Jake or Jerrid ever help him out?

A. No. They're at school.

Q. So these are like during-the-day-type things?

A. Yeah, yeah.

Q. Okay. And you said waitressing jobs, and what was the other one?

A. Factory work.

Q. Factory work? What kind of factory work can't you do now because of the injuries to your shoulders?

A. There's a lot of factories that you can't work in unless you can do lifting above your head because you have to be able to lift

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boxes that you pack onto crates or skids.

Q. Have the doctors given you a specific restriction in which you can't do lifting above your head?

A. Dr. Davis told me do as little lifting above your head as possible, because I said when I lift my arms above my head, it hurts worse, and he said, well, don't lift your arms above your head.

Q. Do you know of any specific factory jobs that you considered and decided against because of your shoulders?

A. No. I'm not a continuous working person because I have five children, trying to get an education. I work when it's supplemental to the family.

Q. Okay. What kind of activities did you engage in before -- as far as hobbies before the August 16th, 2002 incident, to the extent you had time for hobbies?

A. As far as hobbies? My hobbies are painting and stuff. I don't -- as far as hobbies go, I guess it aggravates me when I can't go out there and throw a baseball with my son.

Q. So before August 16th, 2002, you

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would play with your children, correct?

A. Yeah. We do a lot of birthday parties at the park and do the baseball thing, the skateboard thing, you know, badminton.

Q. And Aleeanna, she's still fairly young, correct?

A. Yes. She's three.

Q. And you can't throw her up in the air or do the things you do with babies?

A. Right. A lot of times I can't carry her for extensive times that I need to because of the shoulder pain. There's times when I need to actually hold her in my arms and it bothers me to hold her in my arms an extensive long time.

Q. So it's difficult for you now to paint or play with your children or carry heavy items very -- a long time.

A. Or hold something heavy in my arms just for -- just to hold it in one place after so long, it pulls on the shoulder and strains the shoulder.

Q. And you work --

A. I mean, just sitting here, after I move my shoulder for so long -- like when I would

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have to write reports for school, I know this may sound ridiculous, but if I got a ten-page report, I got twenty pages of writing out notes. After so long of doing this, the shoulder is moving a lot and it's starting to get aggravated (indicating).

Q. Believe me, any attorney understands that. Are there any other activities that you now have trouble participating in?

A. Not that I can recall at this time. I mean --

Q. Did you like do lawn work or that kind of thing at home?

A. Yeah, of course. That's --

Q. And household chores?

A. I can't run a WeedEater because you got to swing it back and forth.

Q. Household chores are more difficult?

A. Household chores, moving furniture, stuff that women do. You get tired of looking at your living room the same way. Moving furniture, can't do that. My husband needs help with something, now we have to get one of the boys, or

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if one of the boys aren't there, we have to wait, that kind of thing. I have problems sleeping because, like I said, I like to sleep on my side, and after laying on my side, after so long with the bed pressing against the shoulder, it starts to aggravate it. I end up on my back or my stomach.

Q. Do you have difficulty doing the everyday tasks of life like bathing yourself or brushing your teeth?

A. No. No. I didn't know if I said that loud enough.

Q. Just one other incident that I need to ask you about, and it occurred just two days after this August 16th, 2002 incident. This occurred on August 18th, 2002 in which your brother Nick took Tyler down to the police department.

A. Yes.

Q. Do you recall that incident?

A. Yes.

Q. Do you remember what injury Tyler had that your brother would want to take him to the police department?

A. That might have been the day he had

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the bruise on his face maybe, or maybe he was just taking him to visit Sarah because at that point he didn't want to go to jail no more.

Q. Okay. This would have been the day that Sarah returned him, I believe.

A. Then he would have showed up to pick Tyler up would have been what it was.

Q. Okay. And were you with Nick when he went to pick Tyler up?

A. Yes, I believe I was.

Q. Do you remember Nick showing the police officers any kind of injuries?

A. I think that was the day his face was bruised.

Q. Actually, the incident report indicates two small light scratches.

A. Yeah. That was the day Bowling said he didn't really see anything.

Q. Okay. At any point did the officers tell you that you needed to wait outside?

A. Yeah.

Q. Did the officers have to warn you about being arrested?

A. No. What happened was when I walked in, Sarah said she didn't want me there. I said

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okay. Officer Bowling said you need to stand outside. I said -- me and my brother argued – my brother argued that he was allowed to have me there as a witness. Officer Bowling asked me to step outside, so I stepped outside and I let them talk, and at that point, my brother turned to walk out the door. I opened the door for him because I was standing right outside the door and I said are you ready, Bub, and Officer

Bowling come out the door and got in my face and started screaming at me.

Q. What did Officer Bowling scream at you?

A. Oh, I can't remember exactly everything, but pretty much that he had had it with me and he was done with me and that every chance he got, he was going to arrest me or something to that effect. I don't know.

Q. Were there any witnesses to that incident?

A. My brother.

Q. Your brother Nick?

THE WITNESS: Do they know --

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MR. STATON: Do you want to go off the record?

THE WITNESS: Yes, please.

MR. STATON: Go off the record for a second.

(Thereupon, Mr. Staton conferred with the witness.)

MR. STATON: Back on the record.

THE WITNESS: I have a tape-recording of that day.

BY MS. JUSTICE:

Q. Okay.

A. I had a tape recorder stuck in my pants that day.

Q. So you have a tape-recording of Officer Bowling saying these things to you?

A. Yes.

Q. Have you provided a copy of that to your attorney?

A. Yes.

MR. STATON: You have?

THE WITNESS: You heard it.

MR. STATON: Okay. But do I have a copy?

THE WITNESS: Oh, no, he doesn't

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have it. I have it at this moment. What's that one little tape laying on your desk?

MR. STATON: I don't know.

THE WITNESS: Okay, Roger. Don't make me think this hard.

MR. STATON: The question, so it's clear for the record, is do you have the tape.

THE WITNESS: Yes.

MR. STATON: You do. Whether I have a copy or not, you have the tape, right?

THE WITNESS: Yes.

BY MS. JUSTICE:

Q. And please make sure that you provide a copy of that to your attorney if he doesn't already have one so that we can obtain a copy of that. Okay?

A. Yes, ma'am.

MS. JUSTICE: Miss Carpenter, I believe that that's it.

THE WITNESS: Thank you very much.

MR. STATON: Do you want to read this and then sign it for accuracy? I mean, it's up to you.

THE WITNESS: I think -- I think --

[p.248]

MR. STATON: We're probably not going to buy a copy of it, okay? So that would mean you would have to go to their office to read it. That would be --

THE WITNESS: Well, no, I don't want to go to their office and read it and sign it.

MR. STATON: So do you want to waive your signature?

THE WITNESS: You're my attorney. You advise me at this point.

MR. STATON: Okay. Let's just ask for signature at this point because we may get a copy of the deposition at this point, but I would have to talk it over with LaDawnya.

(Thereupon, the deposition was concluded at 3:14 o'clock p.m.)

[p.249]

I, LaDAWNYA K. CARPENTER, do hereby certify that the foregoing is a true and accurate transcription of my testimony.

Dated

I do further certify that the said deposition was not examined, read nor signed within 7 days after it's submission for reasons unknown.

/s/ Carol L. Blevins/aas
6/7/08

[p.250]

STATE OF OHIO)
COUNTY OF MONTGOMERY) SS: CERTIFICATE

I, Caryl L. Blevins, a Notary Public within and for the State of Ohio, duly commissioned and qualified,

DO HEREBY CERTIFY that the above-named LaDAWNYA K. CARPENTER, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that said testimony was reduced to writing by me stenographically in the presence of the witness and thereafter reduced to typewriting.

I FURTHER CERTIFY that I am not a relative or Attorney of either party nor in any manner interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Dayton, Ohio, on this 3rd day of May, 2005.

/s/ caryl l. blevins, rpr, crr
CARYL L. BLEVINS, RPR, CRR
NOTARY PUBLIC, STATE OF OHIO
My commission expires 7-16-08

APPENDIX M

DEFENDANT'S EXHIBIT A

PARAGON DIAGNOSTIC CENTER
MRI

DATE: 08/27/2002
RE: CARPENTER, Ladawnya K
SV

RM#
MRN: 04318859
Acct#: 99066722
Ord#: 1

Dear Dr. KRISELL D. FEDRIZZI

Thank you for the opportunity to evaluate this patient with LEFT SHOULDER MRI.

Clinical History: Shoulder pain.

Technique: Axial, Gradient Echo T2, Weighted Images, Coronal, Fat Suppressed T2 Fast Spin Echo, Standard T1 and T2 Fast Spin Echo and Sagittal T1 and T2 Fast Spin Echo imaging was done.

Findings: There is a shallow depressed Type II curvature of the acromion which is down swept anteriorly. There are minimal degenerative changes of the acromioclavicular joint that do contribute to supraspinatus impingement at the supraspinatus outlet. Direct coracoacromial ligament compression of the supraspinatus is not seen.

Coronal imaging shows the supra/infraspinatus tendons to be intact. There are no definite indications of significant cuff tendinitis or cuff tears. Fluid accumulation of the subdeltoid or subacromial bursa is not seen. The biceps tendon is intact. Abnormalities of the subscapularis tendon are not seen. There is no evidence of fracture or bond contusion. Labral abnormalities are not noted either.

IMPRESSION(S):

1. MILD IMPINGEMENT FROM THE LOW LYING ACROMION AND DEGENERATIVE CHANGES OF THE ACROMIOCLAVICULAR JOINT. ROTATOR CUFF TEARS OR SIGNIFICANT TENDINITIS ARE NOT CONFIRMED.

RIGHT SHOULDER MRI STUDY:

Clinical History: Shoulder pain

Technique: Axial Gradient Echo T2, Coronal T1, Fast Spin Echo T2 and Fat Suppressed T2 imaging and Sagittal T1 and T2 FSE scanning was performed.

FINDINGS: Type II, shallow concave undersurface of the acromion is seen with mild anterior down swept configuration in the sagittal views. The possibility of some mild enthesophyte formation on it's undersurface is present. Plus, there are some degenerative changes of the acromioclavicular joint that cause mild impingement of the supraspinatus. No coracoacromial ligament impingement is present.

Imaging of the rotator cuff demonstrates no evidence of full or partial thickness cuff tears. There does appear to be minimal subacromial bursal fluid accumulation. Subtle intratendinous signal of the supraspinatus and infraspinatus tendons are present, possibly from mild tendinitis or tendinosis. The bursal fluid could be due to bursitis. The labral cartilage appears be intact. Bicups tendon is unremarkable and the subscapularis tendon is intact.

IMPRESSION(S):

1. **MILD ANTERIOR ACROMIOHUMERAL IMPINGEMENT.**
2. **MILD TENDINOSIS OF THE SUPRA/INFRASPINATUS WITHOUT EVIDENCE OF PARTIAL OR FULL THICKNESS CUFF TEARS.**

Thank you for this referral and the opportunity to participate in the care of your patient.

Sincerely,

John T. Farrell, D.O.
Signature on File
JTF/jmd Job: 493129 Doc: 455797
D: 08/27/2002 15:02:44 T:08/27/2002 18:55:46
CC:

08/27/2002
CARPENTER, Ladawnya K
7740 Paragon Road, Centerville, Ohio 45459
TEL: 937-438-0063 FAX: 937-438-8620

DEFENDANT'S EXHIBIT B

KMCN CWS Pages 5 - 7
https://intranet.ketthealth.com/kh/cws1/cws6.cfm?slevel=0&sdata=0 8/19/2003

J.E. CARLSON M.D., PhD, Interventional Nuclear Medicine
J.T. FARRELL; D.O.
Name: CARPENTER, Ladawnya K MRN: 04318859
DOB: [REDACTED]/1969 Acct #: 98912819
RADIOLOGY

Page 1 of 1
GRANDVIEW/SOUTHVIEW HOSPITALS, Dayton, Ohio
DEPARTMENT OF RADIOLOGY
W.M. MEYERS, D.O., CHAIRMAN
J.R. CLARK, D.O.
J.E. CARLSON, M.D., PhD, Interventional Nuclear Medicine
J.T. FARRELL, D.O.
Name : CARPENTER, Ladawnya K MRN: 04318859
DOB: [REDACTED]/1969 Acct #: 98950090
RADIOLOGY

Page 1 of 1
Sex/Age: F 33Y Room No:
Family: KRISELL D FEDRIZZI
Ordering: KRISELL FEDRIZZI
Referring: Attending:
Acct Type: O Facility: SV IMG
Dis Date: 04/17/2003 Order #: 1
Exams: XRD-IVP W/OR WO/SCOUT
Date/Time: 04/17/2003 09:23

Reason: See Requisition Acc #:

IVP WITH NEPHROTOMOGRAPHY:
Preliminary film is essentially normal.
After contrast injection, tomograms and plain films were obtained which show no mass lesions, significant dilatation of the collecting system or obstruction on either side.
The kidneys, ureters and bladder appear within normal limits.

IMPRESSION: NORMAL STUDY.

_____

Radiologist
Signed copy on file in Radiology

Richard McKenzie, M.D./kmg
D: 04/17/2003 13:40:42 T: 04/17/2003 14:01:42
Job #586593: Doc #: 536846
CC:
GRANDVIEW/SOUTHVIEW HOSPITALS
Dayton, Ohio
Dept. of Radiology.
Name: CARPENTER, Ladawnya K
MRN: 04318859/ Acct #: 101935096
Job# 586593

History and Physical - DIVISION:00061

KETTERING MEDICAL CENTER NETWORK

Name: CARPENTER, LADAWNYA
MRN: 000004318859
DOB : Acct#: 000102159969
Attending: Facility: SH

Dictated By: Vinod Patwa, M.D. Room No: 2135
PCP: Discharge Date:
Admit Date: 05/05/2003
ADDRESS: 121 East 4th Street, Franklin, Ohio 45005.

CURRENT COMPLAINT AND HISTORY OF CURRENT COMPLAINT: This 32-year-old female patient of Krissel Fedrizzi was admitted and kindly referred by Dr. Henderson. This lady was hospitalized following an overdose. The patient apparently had a big argument with her husband and she overdosed. The chart reveals that there has been difficulties in her marriage and family situation. The patient stated that she was truly attempting to take her own life. She was distraught, did not want to go on. She has five children, the oldest being 14 years. She has had some marital problems. Her husband has a previous drug history. He apparently would go out into the garage and smoke marijuana for 6-8 hours at a time and ignore her and her children. The patient's father-in-law and mother-in-law also have been a problem for her. She states that they do not like her and that they feel that she is trying to take their son away from them. She goes to school full time and in addition she is raising her children. The patient says her grades were effected by all of these stresses. She was afraid of losing her schooling and she felt that this was the only thing she had to live for.

When the examiner evaluated the patient, she denies any somatic symptoms but she said that she has been having "a lot of insomnia." She could not fall off to sleep, then if she did she was tossing and turning. She went to bed tired, woke up tired, energy level was low. She denies any change in her appetite or weight. She

denies any somatic complaints. No panic attacks. No phobias. No obsessions. No compulsions. She has been feeling nervous, anxious, tense, jittery, fidgety, sensitive and irritable, very edgy with her children which she never used to be. She is sad, depressed, cries easily. She said she still has to go but she does not enjoy. She thinks she feels worthless, useless and she has been having suicidal thoughts for two weeks.

ETOH: "NO."

ILLICIT DRUGS:. She said she smoked marijuana until age 19 and then she took Xanax when she was a teenager.

PAST PSYCXIATRIC HISTORY: Nil.

PAST MEDICAL/SURGICAL HISTORY: The patient said she had IVP done because she had left-sided abdominal pain and her family doctor thought that she had a kidney stone or some kind of GI problem. She had a fracture of the left foot. She had arthroscopic surgery on her left shoulder.

MEDICATION PRIOR TO THE HOSPITALIZATION:
1. Effexor.
2. Temazepam.
3. Prevacid.
4. Ativan.
5 . Vicodin.

She was not compliant with her medication.

OVER-THE-COUNTER DRUGS: Dietzx 1-2 q.d. for the last six months.

ALLERGIES: NIL.
SMOKES: 20 per day.
COFFEE: Nil.
PEPSI: One or two per day.

FAMILY PERSONAL HISTORY: The patient is married to her second husband. She has been divorced once from her first husband. She has five children, two from her first marriage and three from this marriage. She said that she and her husband has a home improvement business, they install windows, etc. She was born and raised in Milltown. Her biological father was killed by his wife. She never met him. She had one brother. Her biological father had three children by his second wife. Her half brother attempted suicide. The patier t said this is her first one. Her mother and father both were alcoholic and her biological father also was a drug addict. She did not graduate but she did get her GED and now she is attending school. Her last menstrual period was 04/18/2003.

The patient was arrested twice. Once for criminal damage and another time for driving under a suspended license.

MENTAL STATUS EXAMINATION: A 32-year-old female patient who is alert, she is oriented to place, person and time. Her speech is coherent. Thinking is rational, logical, goal directed. Her mood is anxious. She is rather tense, agitated and depressed with associated symptoms of major depression including suicidal attempt. Her affect is blunted. She is watchful, suspicious, guarded and paranoid but she is cooperative. The range of the affect is narrow. She is amiable towards the treatment. Her intelligence is

average. Her assets include her intelligence and her semi-willingness to seek treatment. Her memory did not reveal any gross deficit in recent or remote events. Her judgment and insight are intact.

DIAGNOSTIC IMPRESSION:
1. Major depression.
2. Anxiety disorder.
3. Substance abuse by history.
4. Personality disorder.

TREATMENT: I suggest that we consider intense inpatient psychiatric treatment consisting of daily psych therapy, milieu therapy, occupational therapy, individual therapy, psychotherapy group, _____ group, pharmacotherapy and family therapy. Once improved, then she can follow at her local mental health center for ongoing pharmacotherapy and psychotherapy. This was discussed and explained to the lady at length.

Will be glad to follow her with you.

VINOD PATWA, M.D.

VP/MedQ
D: 05/05/2003
T: 05/05/2003
Job #: 31519
cc: Krisel D. Fedrizzi, D.O.
Charles F. Henderson, M.D.

HISTORY & PHYSICAL Page 1

FINAL DIAGNOSES:
1. Major depression - bipolar.

2. Anxiety disorder.
3. Substance abuse by history.
4. Personality disorder - paranoid - borderline.

HISTORY OF CHIEF COMPLAINT: This 32-year-old female patient was hospitalized following an overdose, and kindly referred by Dr. Henderson. She was depressed and was labile in her mood affect and heavily in to conjection, externalization. For details please see the admitting history and psych consult.

PAST PSYCHIATRIC HISTORY/FAMILY/PERSONAL HISTORY: Please see the dictated admitting history and physical examination.

It must be noted here that the history and physical was done by Dr. Henderson while she was on the medical floor and a psych consultation was also dictated when she was on medical floor, but the copies are available on discharge.

LABORATORY DATA: Laboratory workup included VDRL nonreactive. CBC with differential showed MCHC of 36.2, the rest of parameters within normal limits. Free T4 was 0.9, TSH 1.79. The rest of the workup was done when she was on medicine-surgical floor.

HOSPITAL COURSE AND TREATMENT: Patient was initiated in individual psychotherapy, milieu therapy, occupational therapy, art therapy, pharmacotherapy and the patient was extremely demanding, very manipulative and med seeking. It appeared that all that she was ingesting was her Vicodin and she continued to complain of abdominal pain. Dr.

Henderson was consulted and until she got her Vicodin, she was very hostile, demanding. This lady took an overdose and the next day she woke up and she wanted to go to the court. The third day she woke up she wanted to attend her child's recital. The patient's verbal utterances and her deeds have no synchronization. She is very paranoid. She is heavily into conjection externalization. She seems to operate from the premises that it is always somebody else's fault. Unfortunately there is severe Axis II type of problem here, but symptomatically she is much improved. She is sleeping good, eating good. She is not exhibiting any suicidal, homicidal ideation intent or plan. She remained rather hostile, superficial, evasive and suffering somatization. The patient has obtained maximum benefit from hospitalization therefore she is being discharged. The patient will be given prescription for Risperdal 4 mg q.h.s. #30 with 2 refills, Effexor XR 75 mg q.h.s. #30 with 2 refills, Ativan 1 mg p.0. q.i.d. #30 with 1 refill. She will be following at her local mental health center.

VINOD PATWA, M.D.

VP/MedQ
D: 05/09/2003
T: 05/10/2003
Job #: 39007

THIS IS AN UNOFFICIAL COPY OF RESULTS FROM THE KMCN CLINICAL WORKSTATION AND MAY NOT CONTAIN THE COMPLETE REPORT.

Printed on: Tuesday August 19,2003 10:55 AM

DEFENDANT'S EXHIBIT C 1

Dec 23 03 04:21p Joseph Walker 434-8439 p.2

ROGER D. STATON
LAWYER
101 Dave Avenue, Suite B-1
Lebanon, Ohio 45036
1-513-934-0522
rstaton@cinci.rr.com

December 19, 2003

[stamped DEC 22 2003]

Re: Carpenter, et al. v. City of Franklin, et al
Warren County Court of Common Pleas
Case No. 03 CV 61265

1. Grandview/Southview Hospital
   Physical Medicine and Rehabilitation
   405 Grand Avenue
   Dayton, Ohio 45405

2. Krisell Fedrizzi, D.O.
   Germantown Medical Associates
   1265 W. Market Street
   Germantown, Ohio 45327

3. Medical Records Custodian
   Victor J. Cassano Senior Community
   Health Center
   165 Edwin C. Moses Blvd.
   Dayton, Ohio 45407

4. Medical Records Custodian
   Paragon Diagnostic Center
   7740 Paragon Road
   Centerville, Ohio 45459

5. Aivars Vitols, D.O.
   1137 Lyons Road, #D
   Dayton, Ohio 45458

Dec 23 03 04:21p Joseph Walker 434-8439 p.1

Dear Madam or Sir:

I am the attorney of record for LaDawnya K. Carpenter and Charles N. Combs in the above case pending in the Warren County Court of Common Pleas. You may have received a Notice of Medical Records Deposition from a Nicholas E. Subashi law firm. That firm does not represent the legal interests of Ms. Carpenter or Mr. Combs and I consider the medical records requested to be privileged.

Should you have any question about whether you should comply the deposition request at this time, I suggest you contact your legal counsel. I am writing to formally inform you that my clients, as of this date, have not given any written authorization for you to release privileged medical records to anyone.

Sincerely,

/s/
Roger D. Staton

RDS/r

C: Ms. LaDawnya Carpenter
Mr. Charles N. Combs

[Handwritten note:
Ms. Ballato

We can't honor your subpoena until we have medical release from the patient.

/s/
for Dr. Vitols]

DEFENDANT'S EXHIBIT C 2

IN THE COMMON PLEAS COURT OF WARREN COUNTY, OHIO CIVIL DIVISION

CASE NO. 2003 CV 61265

LADAWNYA K. CARPENTER, et al.,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
CITY OF FRANKLIN, OHIO, et al.,	)
	)
Defendants.	)
	)

JUDGE BRONSON

NOTICE OF RECORDS DEPOSITION SUBPOENA DUCES TECUM

TO: ATTN: MEDICAL RECORDS CUSTODIAN
Grandview/Southview Hospital
Physical Medicine and Rehabilitation
405 Grand Avenue
Dayton, Ohio 45405

YOU ARE HEREBY COMMANDED to appear at the LAW OFFICES OF NICHOLAS E. SUBASHI, The Oakwood Building, 2305 Far Hills Avenue, Dayton, Ohio 45419, on Thursday, January 15, 2004 at 9:30 a.m. to produce for inspection and copying the

following documents pursuant to Civil Rule 45(A)(1)(b)(iii) before a notary public authorized by law to administer oaths:

Any and all information concerning **LaDawnya K. Carpenter, SSN: [REDACTED], DOB: [REDACTED]/69**, including, but not limited to, any and all information concerning the physical and/or psychological condition and/or any injury, illness or treatment which may have been sustained or incurred by LaDawnya Carpenter from the date of the first visit to the present date, together with copies of any and all in-patient and out-patient records, physical therapy, x-rays, CT scans, consultation reports, all records received and/or transferred to this facility by any other physician and/or health care provider, and all billing and insurance records. This request includes all documents, including handwritten notes, physician notes, nurses notes, receptionist notes, pharmaceutical information and all other information possessed by you concerning LaDawnya Carpenter.

Said records deposition will continue from day to day until completed.

Pursuant to Civil Rule 45(A)(2), this subpoena has been signed and issued on behalf of the court in which the action is pending by the undersigned attorney who has filed an appearance on behalf of Defendants City of Franklin, Leslie Wayne Bowling, Sgt. Whitman and Officer Diekman in this action.

Compliance with this subpoena may be obtained by supplying copies of the information requested above to

the attention of Diana Grooms at the Law Offices of Nicholas E. Subashi on or before January 14, 2004.

Issued by:

/s/ _____

Lynnette Pisone Ballato (0065455)
lballato@nesubashi.com
Law Offices of Nicholas E. Subashi
The Oakwood Building
2305 Far Hills Avenue
Dayton, OH 45419
(937) 534-0500
(937) 534-0505 (fax)
Attorney for Defendants, City of Franklin, Leslie Wayne Bowling, Sgt. Whitman, and Officer Diekman

DEFENDANT'S EXHIBIT C 3

IN THE COMMON PLEAS COURT OF WARREN COUNTY, OHIO CIVIL DIVISION

CASE NO. 2003 CV 61265

LADAWNYA K. CARPENTER, et al.,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
CITY OF FRANKLIN, OHIO, et al.,	)
	)
Defendants.	)
	)

JUDGE BRONSON

NOTICE OF RECORDS DEPOSITION SUBPOENA DUCES TECUM

TO: ATTN: MEDICAL RECORDS CUSTODIAN
Grandview/Southview Hospital
405 Grand Avenue
Dayton, Ohio 45405

YOU ARE HEREBY COMMANDED to appear at the LAW OFFICES OF NICHOLAS E. SUBASHI, The Oakwood Building, 2305 Far Hills Avenue, Dayton, Ohio 45419, on Thursday, January 15, 2004 at 9:00 a.m. to produce for inspection and copying the following documents pursuant to Civil Rule

45(A)(1)(b)(iii) before a notary public authorized by law to administer oaths:

Any and all information concerning **LaDawnya K. Carpenter, SSN: [REDACTED], DOB: [REDACTED]/69**, including, but not limited to, any and all information concerning the physical and/or psychological condition and/or any injury, illness or treatment which may have been sustained or incurred by LaDawnya Carpenter from the date of the first visit to the present date, together with copies of any and all in-patient and out-patient records, physical therapy, x-rays, CT scans, consultation reports, all records received and/or transferred to this facility by any other physician and/or health care provider, and all billing and insurance records. This request includes all documents, including handwritten notes, physician notes, nurses notes, receptionist notes, pharmaceutical information and all other information possessed by you concerning LaDawnya Carpenter.

Said records deposition will continue from day to day until completed.

Pursuant to Civil Rule 45(A)(2), this subpoena has been signed and issued on behalf of the court in which the action is pending by the undersigned attorney who has filed an appearance on behalf of Defendants City of Franklin, Leslie Wayne Bowling, Sgt. Whitman and Officer Diekman in this action.

Compliance with this subpoena may be obtained by supplying copies of the information requested above to the attention of Diana Grooms at the Law Offices of Nicholas E. Subashi on or before January 14, 2004.

Issued by:

/s/ _____

Lynnette Pisone Ballato (0065455)
lballato@nesubashi.com
Law Offices of Nicholas E. Subashi
The Oakwood Building
2305 Far Hills Avenue
Dayton, OH 45419
(937) 534-0500
(937) 534-0505 (fax)
Attorney for Defendants, City of Franklin, Leslie Wayne Bowling, Sgt. Whitman, and Officer Diekman

DEFENDANT'S EXHIBIT C 4

IN THE COMMON PLEAS COURT OF WARREN COUNTY, OHIO CIVIL DIVISION

CASE NO. 2003 CV 61265

LADAWNYA K. CARPENTER, et al.,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
CITY OF FRANKLIN, OHIO, et al.,	)
	)
Defendants.	)
	)

JUDGE BRONSON

NOTICE OF RECORDS DEPOSITION SUBPOENA DUCES TECUM

TO: ATTN: MEDICAL RECORDS CUSTODIAN
Aivars Vitols, D.O.
1137 Lyons Road, # D
Dayton, OH 45458

YOU ARE HEREBY COMMANDED to appear at the LAW OFFICES OF NICHOLAS E. SUBASHI, The Oakwood Building, 2305 Far Hills Avenue, Dayton, Ohio 45419, on Thursday, January 15, 2004 at 11:30 a.m. to produce for inspection and copying the following documents pursuant to Civil Rule

45(A)(1)(b)(iii) before a notary public authorized by law to administer oaths:

Any and all information concerning **LaDawnya K. Carpenter, SSN: [REDACTED], DOB: [REDACTED]/69**, including, but not limited to, any and all information concerning the physical and/or psychological condition and/or any injury, illness or treatment which may have been sustained or incurred by LaDawnya Carpenter from the date of the first visit to the present date, together with copies of any and all in-patient and out-patient records, physical therapy, x-rays, CT scans, consultation reports, all records received and/or transferred to this facility by any other physician and/or health care provider, and all billing and insurance records. This request includes all documents, including handwritten notes, physician notes, nurses notes, receptionist notes, pharmaceutical information and all other information possessed by you concerning LaDawnya Carpenter.

Said records deposition will continue from day to day until completed.

Pursuant to Civil Rule 45(A)(2), this subpoena has been signed and issued on behalf of the court in which the action is pending by the undersigned attorney who has filed an appearance on behalf of Defendants City of Franklin, Leslie Wayne Bowling, Sgt. Whitman and Officer Diekman in this action.

Compliance with this subpoena may be obtained by supplying copies of the information requested above to the attention of Diana Grooms at the Law Offices of Nicholas E. Subashi on or before January 14, 2004.

Issued by:

/s/

Lynnette Pisone Ballato (0065455)
lballato@nesubashi.com
Law Offices of Nicholas E. Subashi
The Oakwood Building
2305 Far Hills Avenue
Dayton, OH 45419
(937) 534-0500
(937) 534-0505 (fax)
Attorney for Defendants, City of Franklin, Leslie Wayne Bowling, Sgt. Whitman, and Officer Diekman

DEFENDANT'S EXHIBIT C 5

IN THE COMMON PLEAS COURT OF WARREN COUNTY, OHIO CIVIL DIVISION

CASE NO. 2003 CV 61265

LADAWNYA K. CARPENTER, et al.,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
CITY OF FRANKLIN, OHIO, et al.,	)
	)
Defendants.	)
	)

JUDGE BRONSON

NOTICE OF RECORDS DEPOSITION SUBPOENA DUCES TECUM

TO: ATTN: MEDICAL RECORDS CUSTODIAN
Krisell Fedrizzi, D.O.
Germantown Medical Associates
1265 W Market Street
Dayton, Ohio 45405

YOU ARE HEREBY COMMANDED to appear at the LAW OFFICES OF NICHOLAS E. SUBASHI, The Oakwood Building, 2305 Far Hills Avenue, Dayton, Ohio 45419, on Thursday, January 15, 2004 at 11:00 a.m. to produce for inspection and copying the

following documents pursuant to Civil Rule 45(A)(1)(b)(iii) before a notary public authorized by law to administer oaths:

Any and all information concerning **LaDawnya K. Carpenter, SSN: [REDACTED], DOB: [REDACTED]/69**, including, but not limited to, any and all information concerning the physical and/or psychological condition and/or any injury, illness or treatment which may have been sustained or incurred by LaDawnya Carpenter from the date of the first visit to the present date, together with copies of any and all in-patient and out-patient records, physical therapy, x-rays, CT scans, consultation reports, all records received and/or transferred to this facility by any other physician and/or health care provider, and all billing and insurance records. This request includes all documents, including handwritten notes, physician notes, nurses notes, receptionist notes, pharmaceutical information and all other information possessed by you concerning LaDawnya Carpenter.

Said records deposition will continue from day to day until completed.

Pursuant to Civil Rule 45(A)(2), this subpoena has been signed and issued on behalf of the court in which the action is pending by the undersigned attorney who has filed an appearance on behalf of Defendants City of Franklin, Leslie Wayne Bowling, Sgt. Whitman and Officer Diekman in this action.

Compliance with this subpoena may be obtained by supplying copies of the information requested above to

the attention of Diana Grooms at the Law Offices of Nicholas E. Subashi on or before January 14, 2004.

Issued by:

/s/

Lynnette Pisone Ballato (0065455)
lballato@nesubashi.com
Law Offices of Nicholas E. Subashi
The Oakwood Building
2305 Far Hills Avenue
Dayton, OH 45419
(937) 534-0500
(937) 534-0505 (fax)
Attorney for Defendants, City of Franklin, Leslie Wayne Bowling, Sgt. Whitman, and Officer Diekman

DEFENDANT'S EXHIBIT C 6

IN THE COMMON PLEAS COURT OF WARREN COUNTY, OHIO CIVIL DIVISION

CASE NO. 2003 CV 61265

LADAWNYA K. CARPENTER, et al.,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
CITY OF FRANKLIN, OHIO, et al.,	)
	)
Defendants.	)
	)

JUDGE BRONSON

NOTICE OF RECORDS DEPOSITION SUBPOENA DUCES TECUM

TO: ATTN: MEDICAL RECORDS CUSTODIAN
PARAGON DIAGNOSTIC CENTER
7740 Paragon Road
Centerville, Ohio 45459

YOU ARE HEREBY COMMANDED to appear at the LAW OFFICES OF NICHOLAS E. SUBASHI, The Oakwood Building, 2305 Far Hills Avenue, Dayton, Ohio 45419, on Thursday, January 15, 2004 at 10:30 a.m. to produce for inspection and copying the following documents pursuant to Civil Rule

45(A)(1)(b)(iii) before a notary public authorized by law to administer oaths:

Any and all information concerning **LaDawnya K. Carpenter, SSN: [REDACTED], DOB: [REDACTED]/69**, including, but not limited to, any and all information concerning the physical and/or psychological condition and/or any injury, illness or treatment which may have been sustained or incurred by LaDawnya Carpenter from the date of the first visit to the present date, together with copies of any and all in-patient and out-patient records, physical therapy, x-rays, CT scans, consultation reports, all records received and/or transferred to this facility by any other physician and/or health care provider, and all billing and insurance records. This request includes all documents, including handwritten notes, physician notes, nurses notes, receptionist notes, pharmaceutical information and all other information possessed by you concerning LaDawnya Carpenter.

Said records deposition will continue from day to day until completed.

Pursuant to Civil Rule 45(A)(2), this subpoena has been signed and issued on behalf of the court in which the action is pending by the undersigned attorney who has filed an appearance on behalf of Defendants City of Franklin, Leslie Wayne Bowling, Sgt. Whitman and Officer Diekman in this action.

Compliance with this subpoena may be obtained by supplying copies of the information requested above to the attention of Diana Grooms at the Law Offices of Nicholas E. Subashi on or before January 14, 2004.

Issued by:

/s/ _____

Lynnette Pisone Ballato (0065455)
lballato@nesubashi.com
Law Offices of Nicholas E. Subashi
The Oakwood Building
2305 Far Hills Avenue
Dayton, OH 45419
(937) 534-0500
(937) 534-0505 (fax)
Attorney for Defendants, City of Franklin, Leslie Wayne Bowling, Sgt. Whitman, and Officer Diekman

DEFENDANT'S EXHIBIT C 7

IN THE COMMON PLEAS COURT OF WARREN COUNTY, OHIO CIVIL DIVISION

CASE NO. 2003 CV 61265

LADAWNYA K. CARPENTER, et al.,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
CITY OF FRANKLIN, OHIO, et al.,	)
	)
Defendants.	)
	)

JUDGE BRONSON

NOTICE OF RECORDS DEPOSITION SUBPOENA DUCES TECUM

TO: ATTN: MEDICAL RECORDS CUSTODIAN
Victor J. Cassano Senior Community Health Center
165 Edwin C. Moses Blvd.
Dayton, Ohio 45407

YOU ARE HEREBY COMMANDED to appear at the LAW OFFICES OF NICHOLAS E. SUBASHI, The Oakwood Building, 2305 Far Hills Avenue, Dayton, Ohio 45419, on Thursday, January 15, 2004 at 10:00 a.m. to produce for inspection and copying the

following documents pursuant to Civil Rule 45(A)(1)(b)(iii) before a notary public authorized by law to administer oaths:

Any and all information concerning **LaDawnya K. Carpenter, SSN: [REDACTED], DOB: [REDACTED]/69**, including, but not limited to, any and all information concerning the physical and/or psychological condition and/or any injury, illness or treatment which may have been sustained or incurred by LaDawnya Carpenter from the date of the first visit to the present date, together with copies of any and all in-patient and out-patient records, physical therapy, x-rays, CT scans, consultation reports, all records received and/or transferred to this facility by any other physician and/or health care provider, and all billing and insurance records. This request includes all documents, including handwritten notes, physician notes, nurses notes, receptionist notes, pharmaceutical information and all other information possessed by you concerning LaDawnya Carpenter.

Said records deposition will continue from day to day until completed.

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Compliance with this subpoena may be obtained by supplying copies of the information requested above to

the attention of Diana Grooms at the Law Offices of Nicholas E. Subashi on or before January 14, 2004.

Issued by:

/s/

Lynnette Pisone Ballato (0065455)
lballato@nesubashi.com
Law Offices of Nicholas E. Subashi
The Oakwood Building
2305 Far Hills Avenue
Dayton, OH 45419
(937) 534-0500
(937) 534-0505 (fax)
Attorney for Defendants, City of Franklin, Leslie Wayne Bowling, Sgt. Whitman, and Officer Diekman

DEFENDANT'S EXHIBIT D

[Ohio Uniform Incident Report Form
Omitted from this Appendix]

NARRATIVE SUPPLEMENT

VICTIM
OFFENSE Disorderly Conduct - Fail

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003330	8/16/2002 1821

Narrative Type: Initial Report
Topic:
Narrative Reporting Officer: Bowling, Leslie W 1F17

On the stated date I was with officers at 30 Beam Drive apartment D for a custody dispute. The sister (defendant) of the father of the child was upset that her brother (father) had been arrested for a tpo violation. The mother of the child wanted to take the child with the sister refusing. Sergeant Whitman spoke to Children Services on the telephone to see if they had any other information as to why the mother should not have the child. Sergeant Whitman advised the defendant that unless there was a court order the mother could have the child. The defendant began screaming profantities with several family members including juveniles in the apartment The defendant stated the police might as well take her because she was not going to let the juvenile go. After speaking with her several times including family members she began to dress the juvenile. After dressing him the

defendant sat on the bed after Sergeant Whitman told her to get up and hand him the child. I then grabbed the defendants left arm pulling her up. At this time Sergeant Whitman was given the child. The defendant began to repeat what she had been doing with officers leaving the apartment. As I was leaving I heard the defendant screaming and what appeared to be throwing objects about in the apartment. There were at least Two other juveniles in the apartment under the age of Two. Once outside I followed Sergeant Whitman to the mothers vehicle. At this time the front door of the apartment complex flew open. I observed the defendant point her finger at the mother and states "You better have him back by 6pm on Sunday, bitch" at the top of her vioce. At this time I told the defendant she was under arrest and to put her hands behind her back. At first the defendant complied as I walked her away from family members that had stepped outside. All of a sudden the defendant began to turn away from me with me pushing her against a parked vehicle. The defendant tried to come off of the vehicle with Sergeant Whitman and Officer Diekman assisting me. She was transported to W.C.J.

REASON CLEARED

* * *

F ☒ ARREST - ADULT

* * *

DATE CLEARED 8/16/2002

REPORTING OFFICER Bowling, Leslie Wayne
BADGE NO. 1F17
DATE 8/16/2002

APPROVING OFFICER
BADGE NO. 1F17
DATE

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003330	8/16/2002 1821

Narrative Type: Case Progress Report
Topic: Interview With Sarah Kirby

On the stated date I conducted a taped interview with Sarah Kirby. During the interview, Kirby stated that she went to 30 Beam Drive Apartment D with police officers to help settle a custody dispute between her and Charles Combs. Kirby advised that while she waited outside the apartment, she heard Charles Combs and LaDawnya Carpenter (Combs' sister) arguing with the officers inside. Kirby and her father were asked to go outside and wait by their vehicle–which they did.

Kirby stated an officer brought out her child to her. Shortly after this happened, Carpenter came running out of the apartment building, in a manner which made Kirby feel threatened, and told Kirby that she better have the baby back by 6 on Sunday. Kirby also stated that Carpenter said this was bullshit.

Kirby stated an officer told Carpenter to turn around that she was under arrest and Carpenter resisted the officer's arrest. Carpenter stated a second officer had to assist the officer in getting Carpenter handcuffed and to the vehicle.

See Transcripts

Narrative Reporting Officer: Hickey, Douglas J.
Reporting Officer: Bowling, Leslie Wayne
Narrative Date/Time: 09/04/2002 1824

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003330	8/16/2002 1821

Narrative Type: Case Progress Report
Topic: Interview With Vernon Kirby

On the stated date I conducted a taped interview with Vernon Kirby. During the interview, Vernon Kirby stated that as he was coming back from getting something to drink, he saw LaDawnya Carpenter come out of the Beam Apartment towards his daughter. Vernon Kirby stated that he heard Carpenter tell his daughter (Sarah Kirby) that she better have the child back by 6 on Sunday. Then Carpenter called her a fucken bitch and a whore. Vernon stated that an officer told Carpenter she was under arrest and she resisted the officer by moving her hands. Vernon stated that a second officer assisted the officer in getting Carpenter handcuffed and walking her to a vehicle.

See Transcripts

Narrative Reporting Officer: Hickey, Douglas J.
Reporting Officer: Bowling, Leslie Wayne
Narrative Date/Time: 09/04/2002 1833

Franklin Police Department
400 Anderson ST
Franklin, OH 45005
Phone 937-746-2882 Fax 937-743-7750

Incident / Offense Report
01-02-003334

Print Date/Time:
9/30/2003 0049

EVENT INFORMATION

Report No. 01 - 02- 003334 Local Report No:
Report Date/Time: 8/17/2002 0006
Type: 19.10 Arrest - Franklin Warrant
Event Date/Time: 8/16/2002 1757 To: 8/16/2002 1844
Comment: Charles Combs
Disposition: Cleared

EVENT LOCATION

30 Beam DR D
Franklin, OH 45005-0000

Location Type: Homeless Shelter, Camper, Houseb
County: Warren
Map / Ref:

Intersection:
Beat / District: Franklin
Zone / Area: Franklin

ADMINISTRATION

Reporting Officer: Wolf, Troy F.

Entered By: Wolf, Troy F.
Approved By:

DISPATCH INFORMATION

Call Number: Call Type:
Received Time: 0000 End Time: 0000
Elapsed Time: 0

DISPATCHED UNIT(S)

PERSON INFORMATION

DEF No.:1 COMBS, CHARLES N
30 BEAM DR. D FRANKLIN, OH. 45005-0000
SSN:
Phone:
Date of Birth: [REDACTED]/1974 Age: 28YRS
Date of Emancipation: / /
D.L. No.: RK784396 State: OH
Exp. Date: 7/26/1999
Place of Birth: Country:
Gender: M Race: W Hgt: 05'07" Wgt: 152 To 152
Hair: BLN Eyes BLU
Residential Status: Resident
Marital Status: N
Statement Obtained:

ARREST INFORMATION FOR

Arrest Type: Warrant
Arrest Date/Time: 8/16/2002 18:27
Local Arrest No.: Warrant No.:
Arrest Department: Franklin Police Department

Assisted By: Arnett Jr., Henry
Assisting Department:
Review Officer:

ARREST LOCATION

30 Beam DR. D Franklin, OH. 45005-0000
Disposition: Handled Within Dept

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-02-003334	8/16/2002 1757

Narrative Type: Facts Of Arrest
Topic:

On the above date and time I went to 30 Beam Dr Apt D and arrested Mr Charles N Combs. Mr Combs had a warrant for TPO violation issued by the Franklin Municipal Court. Mr Combs was transported to the Warren Co Jail for housing.

Respectfully Submitted,

Narrative Reporting Officer:	Wolf, Troy F	1F36
Reporting Officer:	Wolf, Troy F	1F36
Narrative Date/Time:	8/16/2002	1757

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 18:58:48
Page: 1

Complainant And Event Information

Date: 8/16/02 17:57
Report Number:
Entry Officer: 0205094

Event Information

Type Juvenile Visitation/Exchange
Disposition
How Received In Person On Station
Address FPD Franklin OH 45005
Unit(s) 125 121
Officer(s) 0205042

Caller Information

Name Kirby, Sara
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1757
Arrived: 000
Cleared: 000

Additional Information
Female advised Charles Combs is suppose to be here to exchange the child. He never arrived. Have

outstanding warrant for him viol TPO. Unit enroute to ATL. Male found and IC. Female enroute to residence w/ officer.

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 18:58:51
Page: 1

Complainant And Event Information

Date: 8/16/02 18:21
Report Number:
Entry Officer: 0205094

Event Information

Type Juvenile Visitation/Exchange
Disposition
How Received Officer Initiated
Address 30 Beam Dr Apt D Franklin OH 45005
Unit(s) 125 121
Officer(s) 0205042

Caller Information

Name Wolf, Ptl, F36
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1821
Arrived: 1821
Cleared: 1907

Additional Information

Have Charles Combs IC for viol TPO, Sara Kirby enroute to pick up child. Paged Children Services--female called back, had her call Sgt Whitman at the residence 746-7072. Children Services called back and advised what was said on the recorded line. Advised male is in jail, mom has the right to take the child. Children Services advised nothing on file about abuse to the child, will leave message for their case worker. Sara Kirby has the child. Units cleared.

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 18:58:54
Page: 1

Complainant And Event Information

Date: 8/16/02 18:27
Report Number:
Entry Officer: 0205094

Event Information

Type Arrest - Franklin Warrant
Disposition
How Received Officer Initiated
Address 30 Beam Dr Apt D Franklin OH 45005
Unit(s) 125
Officer(s) 0205042

Caller Information

Name Wolf, Ptl, F36
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1827
Arrived: 000
Cleared: 1827

Additional Information
Charles Combs IC for TPO viol warrant. ssn/ [REDACTED]. Transported to WCJ.

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 18:59:02
Page: **1**

Complainant And Event Information

Date: 8/16/02 18:44
Report Number:
Entry Officer: 0205094

Event Information

Type Prisoner Transport
Disposition
How Received Officer Initiated
Address 30 Beam Apt D To WCJ Franklin OH 45005
Unit(s) 125

Officer(s) 0205042

Caller Information

Name Wolf, Ptl, F36
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1844
Arrived: 1908
Cleared: 1922

Additional Information
Transporting Charles Combs to WCJ-TPO viol. Released to Jail. Back in city at 1940

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 18:59:12
Page: 1

Complainant And Event Information

Date: 8/16/02 19:07
Report Number:
Entry Officer: 0205094

Event Information

Type Prisoner Transport
Disposition
How Received Officer Initiated

Address 30 Beam Apt D To FPD Franklin OH 45005
Unit(s) 122
Officer(s) 0205022

Caller Information

Name Bowling, Lt, F17
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1907
Arrived: 1909
Cleared: 1909

Additional Information
Transporting Ladawnya Carpenter to PD, BM-32142 (0)--EM-32143 (1.1).

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 18:59:18
Page: 1

Complainant And Event Information

Date: 8/16/02 19:07
Report Number:
Entry Officer: 0205094

Event Information

Type Arrest- Other Criminal

Disposition
How Received Officer Initiated
Address 30 Beam Apt D Franklin OH 45005
Unit(s) 122
Officer(s) 0205022

Caller Information

Name Bowling, Lt, F17
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1907
Arrived: 000
Cleared: 1907

Additional Information
One female IC, Ladawnya Carpenter--fail to desist. Transported to PD later to WCJ.

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/30/2003 18:59:24
Page: 1

Complainant And Event Information

Date: 8/16/02 19:28
Report Number:
Entry Officer: 0205094

Event Information

Type Prisoner Transport
Disposition
How Received Officer Initiated
Address FPD To WCJ Franklin OH 45005
Unit(s) 122
Officer(s) 0205022

Caller Information

Name Bowling, Lt, F17
Address Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 1928
Arrived: 1949
Cleared: 2004

Additional Information
Transporting Ladawnya Carpenter transported to WCJ. BM-32143 (0)--EM-32155 (12)

DEFENDANT'S EXHIBIT E

Franklin Police Department
400 Anderson ST
Franklin, OH 45005
Phone 937-746-2882 Fax 937-743-7750
Incident / Offense Report
01-01-003088

Print Date/Time:
9/30/2003 1818

EVENT INFORMATION

Report No. 01 - 01 - 003088 Local Report No:
Report Date/Time: 8/03/2001 2037
Type: 9.15 Domestic Dispute
Event Date/Time: 8/03/2001 2037 To: 8/03/2001 2037
Comment: Ladawnya Carpenter assaulted Sarah Kirby
Disposition:

EVENT LOCATION

834 S Main St
Franklin, OH 45005-0000
Location Type: Multiple Dwelling
County: Warren
Map / Ref:

Intersection:
Beat / District: Franklin
Zone / Area: Franklin

ADMINISTRATION

Reporting Officer: Lauffer, Troy Shane.
Entered By: Lauffer, Troy Shane.
Approved By:

DISPATCH INFORMATION

Call Number: Call Type:.
Received Time: 2037 End Time: 0000
Elapsed Time: 203

DISPATCHED UNIT(S)

OFFENSE INFORMATION

Offense No.: 1 S 2903.13 Assault
Attempted / Committed:
Larceny Type: Degree: Misdemeanor- 1
Location Type:
Motive: Theft by Computer: NO
Criminal Activity:
Disposition:
Review Officer:

PERSON INFORMATION

COMP No.: 1 Kirby, Sarah
834 S MAIN ST. D Franklin, OH. 45005-0000
SSN:
Phone: (513)743-1657
Date of Birth: [REDACTED]/1982 Age: 19 YRS
Date of Emancipation: / /
D.L. No.: State: Exp. Date: / /

Place of Birth: Country:
Gender: F Race: W Hgt: 05'05" Wgt: 130 To 130
Hair: BLN Eyes HAZ
Residential Status: Resident
Marital Status: N
Statement Obtained: Yes

PERSON INFORMATION

DEF No.: 1 Carpenter, LaDawnya K
121 E 4TH ST. FRANKLIN, OH. 45005
SSN:
Phone: (513)743-6115
Date of Birth: [REDACTED]/1969 Age: 31 YRS
Date of Emancipation: / /
D.L. No.: RA491964 State: OH
Exp. Date: 8/28/1996
Place of Birth: Country:
Gender: F Race: W Hgt: 05'05" Wgt: 125 To 125
Hair: BLN Eyes BLU
Residential Status: Resident
Marital Status: M
Statement Obtained:

ARREST INFORMATION FOR

Arrest Type: In-Progress
Arrest Date/Time: 8/03/2001 20:47
Local Arrest No.: Warrant No.:
Arrest Department: Franklin Police Department
Assisted By:
Assisting Department:
Review Officer:

ARREST LOCATION

834 S. Main St. Franklin, OH. 45005-0000
Disposition: Handled Within Dept

CHARGE INFORMATION

Charge No.: 1
Related Offense No.: 1
Charge: 2903.13 Assault Count: 1 Degree:
MM Ticket No.:
Disposition: By Arrest- Adult

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-01-003088	8/03/2001 2037

Narrative Type: Dispatch Log
Topic: TRANSFERED FROM DAILY LOG

Complainant advises she is at her brother's residence and there is a domestic fight there. It started between her brother and his wife or girlfriend and has now turned into a large disturbance outside. Arrival, SSN [REDACTED] - Ladawnya Carpenter, SSN [REDACTED] - Bertha Kirby, SSN [REDACTED] - Sarah Kirby, SSN [REDACTED] - Vernon Kirby, SSN [REDACTED] - Charles N Combs. Bertha Kirby was taken into custody and charged with menacing Ladawnya Carpenter. Ladawyna Carpenter was taken into custody and charge with assaulting Sarah Kirby. Both females were released with summons issued. Officers cleared.

Narrative Reporting Officer: Lauffer, Troy S 1F43
Reporting Officer: Lauffer, Troy S 1F43
Narrative Date/Time: 8/03/2001 2037

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-01-003088	8/03/2001 2037

Narrative Type: Initial Report
Topic: Ladawnya Carpenter/Sarah Kirby

On the stated date and time I was dispatched to the above location in reference to a disturbance. Upon my arrival I observed several persons outside yelling at one another.

After further investigation the def. was found to have assaulted the victim. The victim signed a written statement to the facts and signed charges. The def. was arrested and transported to the Franklin Police Dept. for further processing. The def. was then released with her copy of the summons. See statement for further. End of report to date.

Narrative Reporting Officer: Lauffer, Troy S 1F43
Reporting Officer: Lauffer, Troy S 1F43
Narrative Date/Time: 8/04/2001 1842

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/29/2003 18:54:33
Page: 1

Complainant And Event Information

Date: 8/03/01 20:37
Report Number:
Entry Officer: 0205066

Event Information

Type Domestic Dispute
Disposition Cleared
How Received Telephone
Address 834 S Main St Franklin OH 45005
Unit(s) 1F43 1F17
Officer(s) 0205048

Caller Information

Name Carpenter, Ladawnya
Address 834 S Main St Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 2037
Arrived: 2040
Cleared: 2122

Additional Information
Complainant advises she is at her brother's residence and there is a domestic fight there. It started between

her brother and his wife or girlfriend and has now turned into a large disturbance outside. Arrival, SSN [REDACTED] - Ladawnya Carpenter. SSN [REDACTED] - Bertha Kirby, SSN [REDACTED] - Sarah Kirby, SSN [REDACTED] -Vernon Kirby. SSN [REDACTED]-Charles N Combs. Bertha Kirby was taken into custody and charged with menacing Ladawnya Carpenter. Ladawyna Carpenter was taken into custody and charge with assaulting Sarah Kirby. Both females were released with summons issued. Officers cleared. Imported on 8/04/2001 at 18:38:35 Event No.: 01-01-003088

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/29/2003 18:28:37
Page: 1

Complainant And Event Information

Date: 8/03/01 20:52
Report Number:
Entry Officer: 0205066

Event Information

Type Arrest- Other Criminal
Disposition Cleared
How Received Officer Initiated
Address 834 S Main St Franklin OH 45005
Unit(s) 1F17
Officer(s) 0205022

Caller Information

Name Bowling, Lt
Address 834 S Main St Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 2052
Arrived: 000
Cleared: 2052

Additional Information
Ladawnya Carpenter in custody for assault.

Franklin Police Department
INDIVIDUAL DAILY LOG
Printed: 09/29/2003 18:29:13
Page: 1

Complainant And Event Information

Date: 8/03/01 21:04
Report Number:
Entry Officer: 0205066

Event Information

Type Prisoner Transport
Disposition Cleared
How Received Officer Initiated
Address Franklin Police Dept Franklin OH 45005
Unit(s) 1F43
Officer(s) 0205048

Caller Information

Name Lauffer, Officer
Address Franklin Police Dept Franklin OH 45005
Phone 000-000-0000

Dispatch Information

Dispatched: 2104
Arrived: 2106
Cleared: 2122

Additional Information
Officer transported Ladawnya Carpenter to the PD for charges. Begin mileage-82744. Arrival, ending 82745. Charges were typed and signed by Sarah Kirby on Ms. Carpenter for assault. Female was released through the lobby and requested to walk home. Summons issued.

DEFENDANT'S EXHIBIT F

Franklin Police Department
400 Anderson ST
Franklin, OH 45005
Phone 937-746-2882 Fax 937-743-7750
Incident / Offense Report
01-03-003954

Print Date/Time:
9/30/2003 1825

EVENT INFORMATION

Report No. 01 - 03 - 003954 Local Report No:
Report Date/Time: 9/20/2003 1356
Type: 19.10 Arrest - Franklin Warrant
Event Date/Time: 9/20/2003 1356 To: 9/20/2003 1356
Comment: L. Carpenter Warrant
Disposition:

EVENT LOCATION

LAYNECREST LAUNDRY
56 MILLARD DR
FRANKLIN, OH 45005
Location Type: Dry Cleaners/Laundry
County: Warren
Map / Ref:

Intersection:
Beat / District: Franklin
Zone / Area: Franklin

ADMINISTRATION

Reporting Officer: Cole, Robert Allen.
Entered By: Hembree, Peggy S.
Approved By:

DISPATCH INFORMATION

Call Number: Call Type: Station Phone
Received Time: 1356 End Time: 1430
Elapsed Time: 35

DISPATCHED UNIT(S)

Unit Number: 42	Dispatched: 1357	Enroute: 1357
On Scene: 1358	Cleared: 1430	Elapsed: 32
Unit Number: 44	Dispatched: 1357	Enroute: 1357
On Scene: 1401	Cleared: 1403	Elapsed: 2
Unit Number: 73	Dispatched: 1357	Enroute: 1357
On Scene: 1358	Cleared: 1430	Elapsed: 32

OFFENSE INFORMATION

Offense No.: 1 S 1901.13 Contempt
Attempted / Committed: C
Larceny Type: Degree: Misdemeanor- 1
Location Type: Dry Cleaners/Laundry Dry Cleaners/ Laundry
Motive: Not Applicable
Theft by Computer: NO

Criminal Activity:
Disposition: Adult-Summoned/Cited
Review Officer: Cole, Robert Allen

OFFENSE INFORMATION

Offense No.: 2 S 2911.12 Burglary
Attempted / Committed: C
Larceny Type: Degree: Felony- 2
Location Type: Dry Cleaners/Laundry Dry Cleaners/ Laundry
Motive: Not Applicable
Theft by Computer: NO
Criminal Activity:
Disposition: Adult-Summoned/Cited
Review Officer: Cole, Robert Allen

PERSON INFORMATION

COMP No.: 1 KIRBY, SARAH
288 VICTORY LN. FRANKLIN, OH. 45005-0000
SSN:
Phone: (937)743-1262
Date of Birth: / / Age:
Date of Emancipation: / /
D.L. No.: State: Exp. Date: / /
Place of Birth: Country:
Gender: Race: Hgt: 00'00" Wgt: 0
Hair: Eyes
Residential Status: Unknown
Marital Status:
Statement Obtained:

PERSON INFORMATION

DEF No.: 1 CARPENTER, LADAWNYA K
121 E 4TH ST. FRANKLIN, OH. 45005
SSN:
Phone:
Date of Birth: [REDACTED]/1969 Age: 34 YRS
Date of Emancipation: / /
D.L. No.: RM415548 State: OH
Exp. Date: / /
Place of Birth: Country:
Gender: F Race: W Hgt: 05'05" Wgt: 125 To 125
Hair: BLN Eyes BLU
Residential Status: Resident
Marital Status:
Statement Obtained:

ARREST INFORMATION FOR

Arrest Type: Complaint/Officer In
Arrest Date/Time: 9/20/2003 15:21
Local Arrest No.: Warrant No.: 3-08-TRD-4693
Arrest Department: Franklin Police Department
Assisted By:
Assisting Department:
Review Officer:

ARREST LOCATION

56 MILLARD DR. FRANKLIN, OH. 45005
Disposition: Handled Within Dept

CHARGE INFORMATION

Charge No.: 1 Related Offense No.: 1

Charge: 1901.13 Contempt Count: 1 Degree:
MM Ticket No.:
Disposition: By Arrest- Adult

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-03-003954	9/20/2003 1356

Narrative Type: Dispatcher Comments
Topic: TRANSFERED FROM CAD

REQUEST OFFICER LADAWNYA CARPENTER IS THERE GIVNG HER PROBLEMS SHE JUST WANTS TO DO HER LAUNDRY AND LEAVE

OUT WITH THEM LC TAKEN I/C ON WARRANT TRANSPORTED TO STATION

POSTED FULL BOND AND RELEASED

Narrative Reporting Officer: Hembree, Peggy S 1F64
Reporting Officer: Cole, Robert A 1F42
Narrative Date/Time: 9/20/2003 1430

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	INCIDENT DATE/TIME
01-03-003954	9/20/2003 1356

Narrative Type: Facts of Arrest
Topic: L. Carpenter Warrant

On stated date and time I came into contact with Ladawnya K. Carpenter on a disturbance at Lane

Crest Plaza. Dispatch advised that Ms. Carpenter had an outstanding warrant 03-08-TRD-4693. Ms. Carpenter was placed under arrest on the warrant and transported to the police station were she posted bond of $215.00 dollars and was released.

Narrative Reporting Officer: Shannon, Dennis R 1F74
Reporting Officer: Cole, Robert A 1F42
Narrative Date/Time: 9/20/2003 1515

Run: 9/29/2003
18:45:53

Franklin Police Department
DETAIL CALL SHEET

Call No.: 03 0000008941 Type: Disturbance
Date/Time 9/20/2003 13:56:06
Call Taker Done 0:00:00

Incident LAYNECREST LAUNDRY
Address: 56.00 MILLARD DR Suite:
FRANKLIN OH 45005
Cross St.: &

Caller: KIRBY SARAH
Address: 288 VICTORY LN Suite:
FRANKLIN OH 45005-0000 Phone: 937-743-1262

Contact: Complainant
How
Received: 2 Beat/Dist: 1 Disposition: Arrest
Report No.: 01-03-003954 Fire Report No.:
EMS Report No.:

Dispatcher: 0205064

Comments: REQUEST OFFICER LADAWNYA CARPENTER IS THERE GIVNG HER PROBLEMS SHE JUST WANTS TO DO HER LAUNDRY AND LEAVE

OUT WITH THEM LC TAKEN I/C ON WARRANT TRANSPORTED TO STATION

POSTED FULL BOND AND RELEASED

Disposition
Comments
GOG:
Equipment:
Hazards:
Premise:
Range:

Unit	Time	Status	Log Entry
44	13:57:40	Dispatched	S MAIN ST FRANKLIN
44	13:57:41	EnRoute	56 MILLARD DR FRANKLIN
42	13:57:41	Dispatched	2500 COMMERCE CENTER DR FRANKLIN
73	13:57:41	Dispatched	2500 COMMERCE CENTER DR FRANKLIN 8939

Unit	Time	Status	Log Entry
42	13:57:41	EnRoute	56 MILLARD DR FRANKLIN
73	13:57:41	EnRoute	56 MILLARD DR FRANKLIN 8941
42	13:58:27	On Scene	56 MILLARD DR FRANKLIN
73	13:58:27	On Scene	56 MILLARD DR FRANKLIN
42	13:59:34	DS	[REDACTED] LADAWNYA CARPENTER
73	14:00:34	DS	[REDACTED] MEGAN THEIS
42	14:01:03	AR	I/C LADAWNYA CARPENTER WARRANT FOR FTP FINES $205 PLUS $10 FEE
44	14:01:08	On Scene	56 MILLARD DR FRANKLIN
44	14:03:41	Cleared	56 MILLARD DR FRANKLIN
42	14:06:34	TR	BEG MIL 39315 (14.2) TO SIG 4
73	14:06:34	TR	BEG MIL 39315 (14.2) TO SIG 4

Unit	Time	Status	Log Entry
42	14:11:12	TR	ARRIVAL SIG 4 ENDING MIL 39316 (15.4)
73	14:11:12	TR	ARRIVAL SIG 4 ENDING MIL 39316 (15.4)
42	14:30:33	Cleared	56 MILLARD DR FRANKLIN
73	14:30:33	Cleared	56 MILLARD DR FRANKLIN
_INC D	13:56:06	INC	Disturbance - 56 MILLARD DR FRANKLIN - KIRBY, SARAH - REQUEST OFFICER LADAWNYA CARPENTER IS THERE GIVNG HER PROBLEMS SHE JUST WANTS TO DO HER LAUNDRY AND LEAVE OUT WITH THEM LC TAKEN I/C ON WARRANT TRANSPORTED TO STATION POSTED FULL BOND AND RELEASED

Run: 9/29/03
1846

CALL AUDIT TRAIL

Page: 1 Call Number: 030000008941
Call Date/Time: 9/20/2003 13:56:06

DATE	TIME	DISPATCHER/CALL TAKER
9/20/2003	13:56:06	0205064
Details:	Started New Cad Call	
9/20/2003	13:56:12	0205064
Details:	Added or Modified Common Name - Old Value= New Value = LAYNECREST LAUNDRY	
9/20/2003	13:56:18	0205064
Details:	Added or Modified Incident Nature - Old Value= New Value = Disturbance	
9/20/2003	13:56:19	0205064
Details:	Added or Modified Incident Beat - Old Value= New Value = 1	
9/20/2003	13:56:20	0205064
Details:	Added or Modified Incident Zone - Old Value= New Value = 1	
9/20/2003	13:56:20	0205064
Details:	Added or Modified Incident How Received - Old Value= New Value = 2	

DATE	TIME	DISPATCHER/CALL TAKER
9/20/2003	14:04:45	0205064
Details:	Clicked on Unit Backlog - Call Number: 030008941	
9/20/2003	14:06:03	0205064
Details:	Added Dispatcher Comments on Date: 9/20/2003 Time: 14:06:03 By: 0205064 Comments: REQUEST OFFICER LADAWNYA CARPENTER IS THERE GIVNG HER PROBLEMS SHE JUST WANTS TO DO HER LAUNDRY AND LEAVE	
9/20/2003	14:06:15	0205064
Details:	Added or Modified Incident Caller Last Name - Old Value= New Value = KIRBY	
9/20/2003	14:06:18	0205064
Details:	Clicked on Complainant Button - Call Number: 030008941	
9/20/2003	14:08:43	0205064
Details:	Clicked on Unit Backlog - Call Number: 030008941	
9/20/2003	14:09:08	0205064
Details:	Clicked on Unit Backlog - Call Number: 030008941	
9/20/2003	14:09:25	0205064

DATE	TIME	DISPATCHER/CALL TAKER
Details:	Clicked on Unit Backlog - Call Number: 030008941	
9/20/2003	14:09:40	0205064
Details:	Added or Modified Backlog Comments - Old Value= I/C LADAWNYA CARPENTER New Value = I/C LADAWNYA CARPENTER WARRANT FOR FTP FINES $205 PLUS $10 FEE	
9/20/2003	14:15:51	0205064
Details:	Added Dispatcher Comments on Date: 9/20/2003 Time: 14:15:51 By: 0205064 Comments: OUT WITH THEM LC TAKEN I/C ON WARRANT TRANSPORTED TO STATION	
9/20/2003	14:15:55	0205064
Details:	Assigned Law Report Number - Call Number: 030008941 - 03-003954 - Right Click	
9/20/2003	14:30:44	0205064
Details:	Added Dispatcher Comments on Date: 9/20/2003 Time: 14:30:44 By: 0205064 Comments: POSTED FULL BOND AND RELEASED	
9/20/2003	14:30:52	0205064
Details:	Added or Modified Disposition - Old Value= New Value = Arrest	
9/20/2003	14:30:53	0205064
Details:	Closed the Call - Call Number: 030008941	

DATE	TIME	DISPATCHER/CALL TAKER
9/29/2003	18:45:53	0205021
Details:	Print Call Detail Report to: \\Svrpolicesbs\ Dispatch	